Asked to explain this passage, a spokesman for the U.S. weapons building program, now part of the Department of Energy, said Starbird was alerting the subcommittee about two hazards inherent in some older warheads:

A so-called "plutonium-scattering accident" set off by a bomber crash, a lightning strike or some other external blow to the weapon. This can occur when something accidentally explodes the TNT trigger of a nuclear weapon, discharging plutonium particles into the atmosphere but without causing a nuclear blast.

Terrorist seizure of a nuclear weapons site followed by an attempt to detonate, or "nuclear fire the weapons," in Starbird's words.

Despite Starbird's arguments for weapons safety improvements, the Pentagon is not initiating a crash program to purchase the new models and retire the old ones. In fact, a two-month Cox Newspaper investigation has uncovered a pattern of only halting progress toward nuclear weapons security, coupled with instances of delay, neglect and overconfidence.

Air Force Maj. Gen. Richard N. Cody, deputy director of the Defense Nuclear Agency, acknowledged in an interview that safety features could be phased in somewhat more rapidly if money was made available.

"Naturally, everything in the national security budget has to compete for funds, whether it is a new warhead or a battalion in Europe," Cody said.

Of course, there are several layers of weapons safeguards already, many of them classified. There has not been an accident involving a nuclear weapon since 1968, when a B-52 carrying four H-bombs crashed on a frozen bay in Greenland. In that incident the weapons and jet fuel caught fire in the crash, scattering plutonium on the icecap. Some bomb components were lost in 800 feet of water.

As a result of the Greenland crash and an earlier B-52 wreck near Palomares, Spain, the Defense Department in 1968 eliminated the practice of keeping some B-52s with nuclear weapons on around-the-clock airborne alert. Today the bombers are kept on alert on SAC base runways.

The prospect of an air crash involving nuclear weapons has not been completely eliminated, however. For example, a Defense Department order has authorized helicopters and "tactical aircraft" to airlift nuclear weapons on "logistic flights."

The unclassified Pentagon order, dated Dec. 20, 1972, contains a laconic warning to pilots: "Nuclear weapons and major assemblies shall be jettisoned from transporting aircraft only in accordance with the provisions of the USAF Special Weapons Overflight Guide." Air Force officials said the overflight guide, a top-secret publication, contains maps showing unpopulated areas around the world where nuclear weapons could be tossed overboard if necessary.

The delays in phasing out Air Force weapons are matched by the slow-motion pace of the government's actions to replace several thousand 20-year-old Army nuclear warheads assigned to NATO artillery units in Europe.

These warheads, sometimes called "mini-nukes," were produced during the Eisenhower administration, when it was NATO doctrine that any war against the Warsaw Pact nations would be a nuclear one. This assumption has long since changed, however, and NATO conventional forces have been much strengthened.

In the meantime, as a recent Congressional Budget Office study put it, "The frequency of incidents of international terrorism in the early 1970s prompted a realization that highly determined, well-organized, trained and equipped groups of terrorists might succeed in an attempt to penetrate special ammunition storage sites and gain control of a nuclear weapon."

This prospect prompted NATO to increase security forces at the approximately 100 atomic weapons stockpiles in Western Europe. But so far, at least, plans to make the weapons themselves terrorist-proof are at an early stage.

Among the more tempting targets for a group such as the Baader-Meinhof gang is the U.S. Army's 155-millimeter howitzer shell.

It can be carried by one man. It will destroy almost everything in a half-mile diameter. And best of all, from a terrorist's standpoint, it is not equipped with a built-in PAL device to prevent unauthorized use. Although its shipping case has a tough combination lock referred to as a PAL device, Pentagon experts fear it could be jimmied open.

When investigators for the House Appropriations Committee expressed alarm in 1975 about the security of nuclear weapons in Europe, the Defense Department reportedly replied that it had made a technological breakthrough to minimize the terrorist problem arising from such "mini-nukes" as the 155-millimeter and 8-inch atomic artillery shells.

The supposed breakthrough was a 4,000-pound steel box for each warhead. Inside would be a special self-destruct feature allowing weapons custodians to destroy each warhead by remote control in the event it was seized by a terrorist.

Three years later the chief of the House investigating team learned—as a result of the Cox Newspaper investigation—that the warhead destruct boxes had been canceled.

"The system was too expensive and too heavy," Gen. Cody said in an interview. "It was just too darn expensive in terms of competing priorities."

Instead of the destruct box, the Army has developed an electronic self-destruct device that it plans to install inside its new 8-inch atomic shells. The Army is also hoping to replace its old 155-millimeter warheads with a new 155-millimeter atomic shell containing this self-destruct feature. But full funding has not been approved, in part because of the separate controversy over the neutron warhead.

A high Pentagon official was asked whether it is possible in the mean-time for a military commander in Europe to destroy one of the older atomic artillery shells to keep it out of terrorist hands.

"We can do it," he replied, "but it is not a very delightful option because we would have to scatter the plutonium (into the atmosphere)."

Fabricating nuclear weapons is not highly expensive, by Pentagon standards. One high official said once new warheads have been designed, they cost about $100,000 apiece to produce, assuming the nuclear ingredients of an older weapon are recycled. Fitting in a Category D safety device an insensitive high explosive trigger will add "a few tens of thousands of dollars" to the warhead's price tag, it was noted.

Like all assembly lines, the government's nuclear bomb factories cannot be turned off and on at will. The Department of Energy, which runs the weapons plants, tried to achieve and maintain a "sustained level of effort" and avoid "undue fluctuations" in its weapons work force.

Even so, the government's leading bomb experts acknowledge that the job of replacing old warheads which lack modern safety equipment could be speeded up. But it would cost money, perhaps as much as $5 billion in spending over the next few years that could otherwise be postponed until the late 1980s.

SENATE—*Friday, January 27, 1978*

(Legislative day of Tuesday, January 24, 1978)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by Hon. DENNIS DECONCINI, a Senator from the State of Arizona.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Hear the words of the 100th Psalm, 5th verse.

The Lord is good; His mercy is everlasting: and His truth endureth to all generations.—Psalms 100: 5.

Eternal Father, we thank Thee for what has already been done in the program set before us in this place. Restore our souls, sharpen our minds, put love in our hearts. Grant us grace and wisdom to complete the task, not according to our self-will, but in accord with Thy will. Be with us in those quiet heart-searching moments when the world is shut out and the hard decision must be made.

Grant us such purity of heart and fullness of dedication that we may always choose the high and right way against the low and deceptive way. And when at length we come to rest may we rest as those who do justly, love mercy, and walk humbly with their God.

We pray in Thy holy name. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., January 27, 1978.

To the Senate:

Under the provisions of rule I, section 3 of the Standing Rules of the Senate, I hereby appoint the Honorable DENNIS DECONCINI, a Senator from the State of Arizona, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. DECONCINI thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Jour-

nal of the proceedings of yesterday, Thursday, January 26, 1978, be approved.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate today to continue the markup of the Panana Canal treaties.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SENATOR BAYH CHOSEN TO BE CHAIRMAN OF SELECT COMMITTEE ON INTELLIGENCE

Mr. ROBERT C. BYRD. Mr. President, pursuant to the provisions of Senate Resolution 400, agreed to by the Senate May 19, 1976, I hereby announce that the Senator from Indiana (Mr. BAYH) has been chosen by the majority party in caucus to be chairman of the Select Committee on Intelligence.

ADJUSTMENT OF COMMITTEE RATIOS

Mr. ROBERT C. BYRD. Mr. President, I send to the desk, a resolution.

This resolution would adjust the ratios of the Senate Committees on Governmental Affairs; Commerce, Science, and Transportation; and Energy and Natural Resources, to bring them into conformity with the committee assignments ratified by the Democratic conference yesterday.

This resolution does not change the permanent overall committee structure and it leaves the total committee assignments for standing committees at 126.

This resolution has been cleared with the minority leader, Mr. BAKER, Senator CANNON, and Senator STEVENSON.

I ask for the immediate consideration of the resolution.

The ACTING PRESIDENT pro tempore. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 362) amending paragraph 2 of rule XXV of the Standing Rules of the Senate.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of this resolution?

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object. As I said on yesterday, when this matter was discussed briefly, the distinguished majority leader has conferred with us—that is, the minority—on this matter. We have not been involved and no Republican Member is affected by this resolution. The numbers remain in essentially the ratio that they were before and are appropriate to the numbers and divisions within the Senate. We thank the majority for conferring with us on the matter. We have no objection to its consideration and adoption.

There being no objection, the Senate proceeded to consider the resolution.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the resolution.

The resolution (S. Res. 362) was agreed to, as follows:

S. RES. 362

Resolved, That paragraph 2 of rule XXV of the Standing Rules of the Senate is amended—

(1) by striking out of the item relating to Commerce, Science, and Transportation, the number "18" and inserting in lieu thereof "17".

(2) by striking out of the item relating to Energy and Natural Resources, the number "18" and inserting in lieu thereof "19".

(3) by striking out of the item relating to Governmental Affairs, the number "17" and inserting in lieu thereof "16".

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

APPOINTMENT OF SENATORS TO STANDING COMMITTEES

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a resolution making certain majority committee assignments and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 363) appointing Senators to standing committees.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the resolution.

The resolution (S. Res. 363) was agreed to as follows:

S. RES. 363

Resolved, That Senator Hodges of Arkansas be, and he is hereby, assigned to service on the Committee on Agriculture, Nutrition, and Forestry, and the Committee on Environment and Public Works to fill vacancies on those committees.

And that Senator Hatfield of Montana be, and he is hereby, assigned to service on the Committee on Armed Services, and the Committee on the Judiciary to fill vacancies on those committees.

And that Senator Bumpers of Arkansas be, and he is hereby, excused from further service on the Committee on Armed Services and assigned to service on the Committee on Appropriations to fill a vacancy on that committee.

And that Senator Anderson of Minnesota be, and he is hereby, excused from further service on the Committee on Environment and Public Works and assigned to the Committee on Energy and Natural Resources to fill a vacancy on that committee.

And that Senator Melcher of Montana be, and he is hereby, excused from further service on the Committee on Commerce, Science, and Transportation and assigned to service on the Committee on Energy and Natural Resources to fill a vacancy on that committee.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

APPOINTMENT OF MR. MAGNUSON AS CHAIRMAN OF THE COMMITTEE ON APPROPRIATIONS

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a resolution appointing Mr. MAGNUSON as chairman of the Committee on Appropriations. I ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 364) appointing Mr. MAGNUSON as chairman of the Committee on Appropriations.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the resolution.

Mr. ROBERT C. BYRD. Mr. President, I want a vote on this resolution. A voice vote is sufficient, but I want to call to the attention of the Senate that, under the rules, a separate vote can be had on each chairman and that voting can be a rollcall vote if any Senator so desires. Moreover, the full Senate makes the decision in that regard, this final step—not just the majority party, but the minority party as well. So instead of proceeding in the normal manner, I ask for a voice vote unless someone wants a rollcall.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the resolution. Those in favor, signify by saying "aye"; those opposed "no."

The "ayes" appear to have it. The "ayes" have it.

The resolution (S. Res. 364) was agreed to, as follows:

Resolved, That the Senator from Washington, WARREN G. MAGNUSON, be and he is hereby, appointed chairman of the Committee on Appropriations.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. Now, Mr. President, I move to lay that motion on the table.

On that basis, I hurriedly looked around the room to see what the division might be.

The motion to lay on the table was agreed to.

APPOINTMENT OF MR. CANNON AS CHAIRMAN OF THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a resolution appointing Mr. CANNON as chairman of the Committee on Commerce, Science, and Transportation. I ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 365) appointing Mr. CANNON as chairman of the Committee on Commerce, Science, and Transportation.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the resolution.

Mr. ROBERT C. BYRD. Mr. President, again I call to the attention of the Senate that the yeas and nays can be demanded on this resolution and that on the final step, not only the Democrats—who are in the majority, and who, hopefully, will remain in the majority—but the Republicans, as well—who are in the minority, and who are doing such a fine job in the minority that I hope they will remain in the minority—have a voice in the selection of the committee chairmen at this point.

Mr. BAKER. If the majority leader will yield to me, I might say that in this particular case, I recognize the numerical superiority of the majority and, rather than take any advantage of them in this case when there might be some distortion of the ratios by reason of absentees, I am so sure that soon we will be in the majority that I will not voice an objection or utter a challenge and, indeed, will vote for Senator Cannon as chairman.

Mr. ROBERT C. BYRD. Mr. President, the minority leader is in his usual fine form.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the resolution. Those in favor, signify by saying "aye"; those opposed, "no." The ayes appear to have it. The ayes have it.

The resolution (S. Res. 365) was agreed to, as follows:

Resolved, That the Senator from Nevada, HOWARD W. CANNON, be, and he is hereby, appointed chairman of the Committee on Commerce, Science, and Transportation vice Mr. MAGNUSON.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was adopted.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

APPOINTMENT OF MR. PELL AS CHAIRMAN OF THE COMMITTEE ON RULES AND ADMINISTRATION

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a resolution. This resolution appoints Mr. PELL as chairman of the Committee on Rules and Administration. I ask its immediate consideration.

The ACTING PRESIDENT pro tempore. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 366) appointing Mr. PELL as chairman of the Committee on Rules and Administration.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. ROBERT C. BYRD. Mr. President, again I call attention to the fact that this could be a rollcall vote or a division vote, if Senators so desired. I will be satisfied with a voice vote.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the resolution. As many as are in favor say "aye." As many as are opposed say "no." The ayes appear to have it. The ayes have it.

The resolution (S. Res. 366) was agreed to as follows:

Resolved, That the Senator from Rhode Island, CLAIBORNE PELL, be, and he is hereby appointed Chairman of the Committee on Rules and Administration vice Mr. CANNON.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I have no further requirement for my time.

BELIEF IN THE WISDOM OF THE AMERICAN PEOPLE

Mr. BAKER. Mr. President, it is no surprise to any of my colleagues or, more importantly, to my constituents of the Volunteer State, that I have been receiving a tremendous amount of mail recently. These communications from the State of Tennessee and from other parts of the country are not only appreciated, but are welcomed. On yesterday, I received in my office in excess of 11,000 pieces of mail in a single day.

I can assure all those who have written that each piece of mail has been duly noted and recorded and will receive a response as soon as humanly possible.

Mr. President, for the past few months, my staff has labored under an increasing burden, primarily because of huge amounts of correspondence on several key issues. I want to publicly say how much I appreciate their efforts in this regard, as well as the concern which has been expressed by so many Tennesseans. I can assure all of my constituents that their input on matters such as the Panama Canal, the labor reform bill, the revision of the criminal code, the need for adequate energy legislation, and the needs of farmers has not gone unnoticed. I do hope that the many thousands who have contacted my office in regard to these issues will understand the physical limitations of an immediate reply to their letters under these circumstances.

Mr. President, at a time when many are claiming that the Congress is living in an "ivory tower," let me suggest that just the opposite may be true. Increased television exposure, perhaps even audio and/or video transmission of the proceedings in this body and the effectiveness of mass-mail communications have come together with the telephone and other mechanisms to make us more accessible than ever before. Let me say again to those who have inquired on the above matters that I appreciate the time and interest that so many Americans are showing in the workings of their Government. I am certain that my colleagues join me in a renewed belief in the joint wisdom so ably expressed by the American people.

Mr. President, I yield back the remainder of my time.

CRIMINAL CODE REFORM ACT OF 1977

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the unfinished business, S. 1437, which the clerk will state by title.

The legislative clerk read as follows:

A bill (S. 1437) to codify, revise, and reform title 18 of the United States Code, and for other purposes.

The Senate resumed the consideration of the bill.

COMMITTEE AMENDMENT—PAGE 172, LINE 17

The ACTING PRESIDENT pro tempore. The pending question is on the committee amendment on page 172, line 17, which the clerk will state.

The legislative clerk read as follows:

On page 172, beginning with line 17, insert the following:

"(c) DEFENSE.—It is a defense to a prosecution under subsection (a)(1)(B) or (a)(2) that dissemination of the material was legal in the state in which it was disseminated.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota.

Mr. ABOUREZK. Mr. President, I move adoption of the committee amendment.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

Mr. ALLEN. Mr. President, I hope we might have some additional Senators on the floor when this amendment is discussed. I wish, at the proper time, to ask for a yea and nay vote. So in order that we might obtain the attendance of a sufficient number of Senators to get a yea-and-nay vote, I suggest the absent of a quorum.

I might state that as soon as sufficient Senators come in to sustain a request for a yea-and-nay vote, I will ask that the quorum be called off.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Alabama.

Mr. ALLEN. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ALLEN. Mr. President, I ask unanimous consent that I might at this time ask for the yeas and nays on a motion to table that I plan to make.

The ACTING PRESIDENT pro tempore. Is there objection to it being in order?

Without objection, it is so ordered.

Mr. ALLEN. Mr. President, I ask for the yeas and nays on the motion to table.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ALLEN. Mr. President, on yesterday, the Senate, by a fairly close vote—48 to 40, I believe—inserted into the bill, which is designed to become the law of the land, two provisions having to do with the offense of dissemination of obscene material, making it more difficult for pornographers, disseminators of obscene material, to be prosecuted, sharply narrowing the districts available for the institution of criminal action against pornographers. Both these amendments are exceptions to the general rule as to where actions may be commenced in criminal cases.

The first had to do with the offense of conspiracy. Under the rule of law established by the bill, and which is in fact the present law, the criminal prosecution could be instituted in any district where any act in furtherance of the conspiracy was taken by any member of the conspiracy.

However, the Judiciary Committee, in its wisdom, by a narrow vote, changed the rule as to pornographers and said, "No, you are not going to have to be governed by the same rule that applies to all other conspirators. We are going to carve you out a provision making special consideration for you, so that you can be prosecuted only in the district where the major portion of the action under the conspiracy took place."

So this is a provision adopted by the Senate on yesterday. I am not trying to upset that. I would if I could, but it is already part of the bill.

The second provision on venue provided that the disseminator of obscene material is going to be taken out from under the general rule having to do with criminal offenses under the use of the mails. Under the present law and under the bill, those who permanently use the mails. Under the present law and under where the mails move from the point of origin to the ultimate destination. So that en route, the offensive material, the obscene material, or any other type of use of the mails criminally, could be confiscated. The materials being sent in the mails could be confiscated and the action brought anywhere along the line, anywhere the mails went.

Under the amendment of the committee, adopted on yesterday, there could not be a prosecution in any of the intervening territory through which the mails went; and even though you might confiscate the offending material en route, you could not prosecute there.

So this sets up a special provision, again, changing the present law in favor of pornographers. I think that was ill-advised action on the part of the Senate.

Those amendments were considered en bloc, because I felt that the same vote would result if they were considered together as if they had been considered separately. I pointed out when I was discussing those amendments that, not being satisfied with making it harder to institute a criminal action against a pornographer, a disseminator of obscene material—and, by the way, I might say that the manager of the bill, the distinguished Senator from South Dakota (Mr. ABOUREZK) might well have explained the theory under which he offered in the committee the amendment we are now discussing, but he chose not to do so and merely moved to approve the committee amendment.

Mr. ABOUREZK. Does the Senator want me to interrupt now and explain it?

Mr. ALLEN. No. The Senator from South Dakota had his opportunity, and he will have another opportunity.

So the committee was not satisfied with making it harder for the Government to bring criminal action against a pornographer. They agreed, by a narrow vote in committee, to afford a pornographer an outright defense—not just limit the jurisdictions in which the criminal charge could be filed and prosecuted. That is one thing.

The Senate has acted on that. But the third amendment, the one we are discussing now and that I will presently move to table after all who desire to speak on it have had that opportunity, this amendment hands to the pornographer in the cases referred to in the amendment an outright defense to the criminal action brought against him. Let us see what it says:

"Defense"—page 172, starting at line 17. If any Senators desire to make considered judgment of their vote on this amendment, they might follow on this. "It is a defense to a prosecution under subsection 5(a)(1)(B) or (a)(2) or (a)(2)"—that is these defenses on dissemination of obscene material—"that the dissemination of the Material was legal in the State in which it was disseminated.

In the first place, let us see what "disseminate" means and we find that on page 171, not always Webster's Dictionary, but this is the definition of "disseminate." "(A) to transfer, distribute, dispense, lend, display, exhibit, send"—by mails or otherwise—"send or broadcast, whether for profit or otherwise; or (B) to produce, transport, or possess with intent to do any of the foregoing."

So, this wording is ambiguous, Mr. President. Does that mean, then, that if the material were dropped in the mails, therefore disseminated, in a State where smut is legal, if there be such—and I assume there are or the amendment would not be here—dropping that in the mails is dissemination of it? Certainly it is. So, the amendment is ambiguous in that it could possibly be contended that since it was disseminated in a State where smut is legal, therefore this would be a defense, no matter where the offending material went.

Also, Mr. President——

Mr. ABOUREZK. Mr. President, will the Senator yield briefly on that point?

Mr. ALLEN. No. I want to maintain the continuity of my argument here. The Senator will have plenty of opportunity to address remarks to what I have said. He was reluctant to speak at the outset and now he decides he wants to speak. He will have an opportunity to make his argument in favor of this amendment if he wishes.

This amendment that the committee is seeking to graft onto this bill, and I am going to seek to kill, will pave the way and if it is legal in the State and it is printed up or filmed or whatever, there would be no Federal offense certainly until it crossed a State line. And it could be disseminated or sent or broadcast throughout the remaining 50 States, and without some ability to move in quickly and put a stop to this the distributor or disseminator of obscene material could flood the country with obscene material much of it going into States where it would not be legal. Mr. President, much is going to be said, well this argument was made in the committee that this is a State's rights amendment, let the State decide whether it is legal or not, and the Supreme Court says that what is obscene shall be determined by community standards, local community standards.

That is not the point, Mr. President. The defense which is sought to be given to pornographers under this amendment, that is, the defense that the dissemination of obscene material might be legal in a State, that should not be allowed to be a defense in those portions of the State where local community standards feel that such material is obscene. Just because that is the State law does not mean that obscence material would not be offensive in many, many communities throughout the State. So this amendment would allow a pornographer in a State where dissemination of obscene material is legal to set up a veritable cesspool of obscene materials, send them to States where the dissemination of obscene material is legal, no matter how offensive it is to communities throughout the State, and it is an absolute defense under this committee amendment that it is legal in that State.

So what we are doing under the committee amendment—and I wish some more Senators were here to form an educated judgment on this matter—what we are doing, though, is handing to the pornographer an airtight defense in all those States where the dissemination of obscene material is legal. I do not know how many States there are. I have been advised there are some four States where dissemination of obscene material is legal. That would not make it accepted, though, throughout the State. It is not every law that a State has that has the unanimous backing of all of the people, and just because it is legal in a particular State does not mean there is not community after community after community in the State where it is offensive and where it is regarded as being obscene and objectionable.

So, Mr. President, we have already made a mistake as I see it in the Senate by making it harder to prosecute pornographers, making it harder to select a

district where the pornographer might be prosecuted. So, in addition to that, once the prosecution is brought in these limited jurisdictions that the previously adopted amendments confine the Government to, under this amendment on page 172, we are going to hand the pornographer an airtight defense in those States where dissemination of obscene material is legal.

So this is just going to increase the business of the pornographer, let him with impunity spread smut throughout States where it is legal if there be such, and I have been advised that there are four. There are some or we would not have this amendment. I think we can safely assume that. So we are going to allow someone with a cesspool of smut in a State where smut is legal to spread that smut in these States where the dissemination of obscene material is legal. Yes, increase the traffic in obscene material, increase the trade of the pornographer, allow him with impunity to spread obscene materials throughout certain of our States, no matter how objectionable it may be to hundreds of thousands of citizens in those States. That is what this amendment would do.

And as soon as the discussion has ended, Mr. President, I desire to move to table the committee amendment.

Mr. ABOUREZK. Mr. President, my colleague and friend, Senator ALLEN, has asked me to provide an explanation for this amendment. The explanation could be delivered to him, I guess, in 10,000 words or 20,000 words, but there is one very short explanation. It comes from a distinguished former Justice of the Supreme Court, William O. Douglas, who said that it is not the business of the Government and, by inference, Senator ALLEN or Senator ABOUREZK or Senator KENNEDY, to tell people what they can read or what they cannot read, and to me that is the simplest and most straightforward explanation for this kind of amendment.

To get beyond that just briefly, I think the representations made by my colleague from Alabama are not entirely in accord with what this amendment really says. The amendment says that it is a defense to a prosecution under certain subsections that dissemination of the material was legal in the State in which it was disseminated.

Yesterday, and again today, Senator ALLEN made roughly the same remark, and I quote:

> The Abourezk amendment affords another defense to the disseminator of obscene materials. It says that in any prosecution against him, he can offer as a defense that the material he was disseminating was legal in the States where it was disseminated.

What is wrong with that? If it is legal in a State, that means the State itself has made the determination that there is nothing wrong with the material being disseminated.

I have a lot of problems, as one who tries to keep faith with the Constitution, with any kind of censorship. I think some of these laws concerning what you can publish and what you cannot publish, no matter whether I like to read it or not, I think these laws conflict directly with the first amendment.

I would hope that a person, a very staunch defender of the Constitution, such as Senator ALLEN is, would make an effort to see that. But I see nothing wrong with the Federal Government not poking its nose into the business of a State once a State has determined whether something is legal or illegal.

I think Senator ALLEN reaches too far when he tries to substitute a Federal interest for the interest of the States in this matter. And let me note that the laws against some of this kind of thing, the censorship laws that some States have passed, and the Federal Government has passed on certain occasions, reach too far in the first instance, in my view.

The amendment here is consistent with the Dole amendment that was passed on Wednesday. The standards of morality vary in different parts of the country. I do not think it incumbent upon the Federal Government to establish one standard of morality nationwide, and the Supreme Court has agreed.

What is moral in Alabama may be immoral in South Dakota. What is moral in South Dakota may be immoral in New York or California. Who are we to say?

One thing we should not do in this instance is to violate the principle of really minding our own business when it comes to telling States what to do.

One final point: This provision would serve as a defense, not as a bar to prosecution. It is a defense that would be entitled to be brought up before the jury in a Federal trial.

If certain materials were legal in the State of Alabama and illegal in California, and if some of this material was mailed from Alabama to California this provision would not be a defense to a Federal prosecution in California the mailing of those materials.

What is wrong with that? There is nothing wrong with that. This defense is consistent with the principle that if a State thinks it is illegal, then nobody can disseminate materials in that State, whether you do it by mail or by truck or whatever.

So what we are doing is keeping faith with the constitutional system of the Federal Government not poking its nose into the business of the States when they determine what the standards of morality are in each of those States.

It seems to me that the arguments of the Senator from Alabama, while very well intentioned, do violence to the principles of the Constitution, and I would hope my colleagues would vote "No" to the tabling motion, and reject his arguments altogether.

Mr. ALLEN. Mr. President, sometimes we hear strange voices raised in behalf of States rights. We hear the distinguished Senator from South Dakota, and I guess because he is from South Dakota he is in favor of States rights, and that States rights seem to be something that Southern States defend.

But what we have got here is an amendment to the present law making it more difficult to successfully prosecute disseminators of pornographic material.

The fact that there is a State law saying that smut is legal in a State does not remove, under the existing law, the necessity that material shall not offend local community standards as to what constitutes obscene material.

The distinguished Senator says it is not a bar to prosecution, but it is a defense. Well, what is the difference? That is splitting hairs. No sane district attorney would prosecute where there is a defense written into the law. It is an absolute defense. The case would not go to the jury; the defendant would get an affirmative charge by the judge, of course, if the district attorney were foolish enough to bring a case.

But what is law in a State does not necessarily guarantee that that defines and speaks for the sensibilities of every citizen in the State. Whether or not the State law says that they can disseminate obscene material under the present law, it is an offense to send from one State to another State obscene material, and the local community's feeling would determine whether or not it was obscene. That is the present law.

The amendment would change all of that, and say that "if the State law permits it, we are not going to talk about the sensibilities of 20 communities throughout the State, or 50 communities throughout the State; we are going to allow them to be bombarded through the mails by disseminators of smut."

This would greatly increase the potential customers under legal proceedings—or proceedings that are legal, that is, carrying on this nefarious trade. It would legally allow a vast increase in the amount of pornography that is distributed. Because in a State where it is legal—and I hope the distinguished Senator from South Dakota, having made a study of this subject, will tell us in what States it is legal when I have finished my remarks—this would allow a pornographer in a State where the dissemination of obscene material is legal to get a list of every householder, and every high school student for that matter, in the State, send them all sorts of obscene material, send to Alabama, say, 2 million pieces of mail advertising the sale of pornographic material, and sending free samples along with it, if this did not offend the Alabama law.

So, with pornographers always trying to increase their business, the Abourezk amendment would allow them to increase it legally.

Mr. ABOUREZK. I think there is a fact that has to be corrected in the Senator's argument.

Mr. ALLEN. All right.

Mr. ABOUREZK. It is not legal under any circumstances to send sexually explicit materials to minors under Federal law. Even though it might be legal in the State to distribute sexually explicit material, it would not be legal to distribute it to minors under this amendment or under this proposed code, as the Senator well knows, because it was his committee that took care of the amendment.

Mr. ALLEN. Yes. I would have to adjust what the Senator says there: The amendment that got adopted in the committee does not allow the sending of child pornography. That is not exempt.

Mr. ABOUREZK. Let me read it to the Senator, from page 171 of the committee bill:

A person is guilty of an offense if he:
"(1) disseminates obscene material:
"(A) to a minor

et cetera.

Mr. ALLEN. Very well; he could not send it to a minor, then. To every adult in the State, which, of course, could well come into possession of the children in the home where this material is unsolicited.

What we are doing is allowing the pornographer to greatly increase his business, his prospects, those to whom he sends pornographic material, and do it legally.

So if we want to increase the traffic in pornographic material, let us vote for the committee amendment. If you want to keep the present law, which is none too strict, then vote against the amendment.

I plan to make a motion to table as soon as the distinguished Senator from South Dakota has finished his remarks. I see he is ready to discuss it further. I hope he will tell us the States where the dissemination of obscene material is legal, so we will know what States will be targeted for a flood of obscene material.

Mr. ABOUREZK. Mr. President, I just want to say that if any State thinks there is a problem, if people are sending out free samples of whatever it is the Senator is talking about commercially to adults—the Senator understands it is illegal to send such material to minors; he agrees with that—if that happens in a State, if that becomes a problem, it would seem to me the State might want to make that activity illegal. As I see it, if the State thinks it is legal now, or the State, through its political process, wants to make it legal, that is fine. It does not bother anyone else in any State, it does not bother the Federal Government, and I think we ought to keep our noses out of it.

If the State feels it is going to be a severe problem, it seems to me the citizens of the State will prevail upon their State legislature to make such dissemination illegal. Once again, no matter what kind of cover you put on it, what this amounts to is really interference into the right of a State to determine what is moral and what is immoral in its own eyes. Why should the Federal Government poke its nose into their business? I do not see any reason to; no reason whatever.

But it seems to me that this defense—and once again, it is not a bar to prosecution, it is merely a defense—makes it a jury question, and if the jury believes it is legal in that State or illegal in that State, it is up to them to decide. They can determine that, based on the assertion of this sort of defense, during the Federal trial on whether something is obscene or not obscene.

I do not have anything more to say. When the Senator is ready to make his motion——

Mr. ALLEN. Mr. President, I move to lay the amendment on the table.

The ACTING PRESIDENT pro tempore. The yeas and nays have been ordered.

The question is on agreeing to the motion to lay on the table of the Senator from Alabama. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Kentucky (Mr. FORD), the Senator from Vermont (Mr. LEAHY), the Senator from Montana (Mr. MELCHER), the Senator from New York (Mr. MOYNIHAN), and the Senator from Arkansas (Mr. HODGES) are absent on official business.

I further announce that the Senator from Colorado (Mr. HASKELL), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Oregon (Mr. HATFIELD), the Senator from Georgia (Mr. NUNN), the Senator from Mississippi (Mr. STENNIS), and the Senator from South Dakota (Mr. MCGOVERN) are necesarily absent.

I further announce that, if present and voting, the Senator from New York (Mr. MOYNIHAN) would vote "nay."

Mr. BAKER. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLDWATER), the Senator from California (Mr. HAYAKAWA), the Senator from Nevada (Mr. LAXALT), the Senator from Alaska (Mr. STEVENS), the Senator from Texas (Mr. TOWER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I further announce that the Senator from Missouri (Mr. DANFORTH), the Senator from Pennsylvania (Mr. HEINZ), and the Senator from Vermont (Mr. STAFFORD) are absent on official business.

On this vote, the Senator from California (Mr. HAYAKAWA) is paired with the Senator from Alaska (Mr. STEVENS). If present and voting, the Senator from California would vote "yea" and the Senator from Alaska would vote "nay."

The result was announced—yeas 20, nays 53, as follows:

[Rollcall Vote No. 14 Leg.]

YEAS—20

Allen	Hatch	Schweiker
Bartlett	Helms	Scott
Byrd, Robert C.	Hollings	Sparkman
Eastland	Huddleston	Stevenson
Garn	Randolph	Thurmond
Griffin	Roth	Zorinsky
Hansen	Schmitt	

NAYS—53

Abourezk	DeConcini	Morgan
Anderson	Domenici	Muskie
Baker	Glenn	Nelson
Bayh	Gravel	Packwood
Bentsen	Hart	Pearson
Biden	Hatfield, Mark O.	Pell
Brooke	Hathaway	Percy
Bumpers	Inouye	Proxmire
Burdick	Jackson	Ribicoff
Byrd, Harry F., Jr.	Javits	Riegle
Cannon	Kennedy	Sarbanes
Case	Long	Sasser
Chafee	Lugar	Stone
Chiles	Magnuson	Talmadge
Church	Mathias	Wallop
Clark	McClure	Weicker
Culver	McIntyre	Williams
Curtis	Metzenbaum	

NOT VOTING—26

Bellmon	Hatfield, Paul G.	McGovern
Cranston	Hayakawa	Melcher
Danforth	Heinz	Moynihan
Dole	Hodges	Nunn
Durkin	Johnston	Stafford
Eagleton	Laxalt	Stennis
Ford	Leahy	Stevens
Goldwater	Matsunaga	Tower
Haskell		Young

So the motion to lay on the table was rejected.

The PRESIDING OFFICER (Mr. SASSER). The question occurs on the amendment. The yeas and nays have been ordered.

Mr. ALLEN. Mr. President, a yea-and-nay vote has been ordered. I should like to discuss the amendment just a little bit more. I shall not make a full discussion of it.

Mr. BUMPERS. Before the Senator does that, will he yield for a unanimous-consent request?

Mr. ALLEN. Yes.

Mr. BUMPERS. Mr. President, I ask unanimous consent that Gregory Jones of my staff may have the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ABOUREZK. Mr. President, the Senate is still not in order.

The PRESIDING OFFICER. The Senate will be in order. Those Senators who wish to converse will retire to the cloakroom.

Mr. ABOUREZK. I think the Senator from Alabama is entitled to be heard, so I would appreciate it if the Chair would see that we have order.

The PRESIDING OFFICER. The Senate will suspend until we have order.

The Senator from Alabama.

Mr. ALLEN. Mr. President, I am not quite willing for this important question to be decided on the failure of a motion to table to carry. I feel that if the Senate is to strike the blow for pornography, we should have an up-and-down vote on the question because on yesterday we, by adopting two of the committee amendments made it more difficult, more restrictive, as to the districts in which criminal actions against pornographers could be brought.

Not being satisfied with that, this amendment which the Senate is asked to approve goes beyond merely the matter of where the criminal action has to be commenced. It hands to the pornographer an ironclad defense to dissemination of pornographic or obscene materials in a State just because that State has failed to enact a law against the dissemination of obscene material.

So we are going to penalize those States and say that just because they have not moved in this area, we are going to allow the State to be flooded with all sorts of pornographic material, for every adult in the State to receive pornographic material through the mails in an effort to sell the wares of the pornographer.

Mr. ABOUREZK. May we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ALLEN. We are going to make it easier for the pornographer to ply his trade.

Now, we say, "Let's leave it up to local community standards, that is what this amendment does."

Far from it. Just the very opposite is true because, since the State has not acted in this area, we do not allow local community standards to come into play. Every community in the State might be opposed, or feel that this type of material is obscene, but yet just because the State legislature has not passed a law against it, then this offensive material can be sent throughout the State, throughout the length and breadth of the State, with full impunity.

Now, that is just a pornographer's dream, Members of the Senate. By gift of the U.S. Senate under this amendment, pornographers would be allowed to ply their trade by sending obscene material through the mails to every community in the State, where it is offensive to every community in the State, because the State law is silent on the subject and they have not made it illegal.

So what we are doing, as I say, is striking a blow for pornography. If the Senate wants to do that, fine.

This is not a State's right issue. Far from it. It is penalizing the citizens of a State because their State legislature has failed to act in this area and it makes every citizen of such States that have not acted a victim, or potential victim, for the receipt of pornographic material.

If we want to help the pornographer ply his trade, if we want to make it legal to address pornographic material in an effort to sell more pornographic material, if we want to make people in these States that have not acted in this area subject to this flood of mail, let us vote for the amendment.

Personally, I do not favor favoring the pornographer.

Mr. GRIFFIN. Will the Senator yield for a question?

Mr. ALLEN. Yes.

Mr. GRIFFIN. I want to ask the Senator from Alabama a question similar to what I asked yesterday because, in my mind, I would like to think that this bill that we are working on here is a codification of the existing criminal law and I keep finding that it is much more than that in various respects.

So let me ask, in this situation, what is the existing law insofar as this particular point is concerned and does this committee amendment change existing law?

Mr. ALLEN. Yes. The committee amendment does change existing law because this defense is not available under the present law.

Mr. GRIFFIN. Well, we are actually giving the smut peddlers and pornographers a defense that they do not now have?

Mr. ALLEN. That is exactly correct.

Mr. GRIFFIN. That is enough for me. I do not want to go any further into it myself. I asked that question because I have a lot of pet amendments that I think should be made to the criminal laws.

For many years, as a matter of fact, I have been very disturbed about the Supreme Court's exclusionary rule where valid evidence is thrown out and accused people, who are obviously guilty, are set free because of a technical violation of the fourth amendment.

It seems to me that, as some other countries have done, they would put in place some sort of a system to penalize the person who violated the fourth amendment rather than penalizing society by letting the guilty criminal go free.

Mr. ALLEN. Yes.

Mr. GRIFFIN. That would be something that would be a major improvement in our system, if we could do something about that.

The Chief Justice, Justice Burger, 3 or 4 years ago, wrote a very interesting and compelling dissent in a leading case urging the Congress to make such a change, because if we were to set a system in place the courts could change that rule.

I have a bill and it is very tempting to offer it as an amendment to this, but it is a very basic change in the law. I do not think it should be handled that way. I think it should not be handled as a codification of the law because it is a basic change in the law.

I do think the Judiciary Committee should consider and hold hearings to give the Senate an opportunity to work its will on such an important change as that.

So, I resent, frankly, the substantive changes that have been made in this so-called codification, whether they are in favor of the criminal or against the criminal.

I particularly resent the ones that make it easier for the people who are accused of crime.

Mr. ALLEN. Yes.

Mr. GRIFFIN. Therefore, if I agree with the Senator, I vote against the committee amendment; is that correct?

Mr. ALLEN. That would be correct.

Mr. GRIFFIN. All right, that is my position.

Mr. LONG. Will the Senator yield for a question?

Mr. ALLEN. Yes.

Mr. LONG. Will the Senator explain to me just exactly how the revision in the proposed code here would be more favorable to the pornographer than the existing law?

Mr. ALLEN. Yes, I am glad to.

I have been trying to make that explanation. I am sorry I have fallen down on the job, but I am glad to explain it.

The amendment on page 172, starting at line 17, affords the pornographer an absolute defense that is not available to him now by saying that if pornographic material is disseminated into a State, from one State to another, and it is legal or has not been outlawed in such State, then that is an absolute defense to a criminal action against the pornographer. That defense is not available now. They say this is a local control, local community standard. Far from it. It is just the opposite of that, because by inaction of the State legislature in making this a crime, it deprives the local communities of saying that it is obscene.

So it deprives the local communities of having local community standards prevails; because they are flooded with this material, potentially, and it is not against the law because the State legislature has not made it against the law.

Mr. LONG. Is the Senator speaking of a situation where the local county law or the local city municipal ordinance would be against pornography but the State law would not be? Is that the type thing he is referring to?

Mr. ALLEN. No, there is not a conflict between the State and local government. This says: "was legal in the State in which it was disseminated." So if the State has not made the dissemination of obscene material illegal, it is legal. Anything that has not been made illegal I assume would be legal.

Mr. LONG. Is that not the usual rule? In criminal law, the rule of stricti juris applies, as I understand it, and nothing is a crime unless the law says it is a crime.

Mr. ALLEN. But the Federal law says it is a crime. That is what I am pointing out. The Federal law says it is a crime.

Mr. ABOUREZK. But not under the local standard rule we adopted in Senator DOLE'S amendment.

Mr. ALLEN. It is against the Federal law to disseminate obscene material that is held to be obscene by local community standards. But this amendment deprives the citizens of the right to say, according to local community standards, that it is obscene.

Mr. ABOUREZK. I have to take issue with that. That is not the case. If it is illegal in a State or in a community, the Federal law will not provide this defense.

The Senator from Alabama has made a number of statements that I have to take issue with on the basis of fact.

Mr. ALLEN. I would like the Senator from South Dakota to point out to me where I have misstated.

Mr. ABOUREZK. That is not the only one. This is not a bar to prosecution. This is not an airtight defense. This is a defense that makes it a jury question.

The amendment really says that the long arm of the Federal Government should not intervene into State or local community standards. It is not a pro-pornography amendment.

For 2 days, the Senator from Alabama has been calling everything that floated by here pornography and smut, in an effort to scare people around here in their upcoming election.

It is simply an effort to keep the Federal Government's nose out of the State's business. That is the only effort it is.

Senator LONG was right: It is the usual rule that if you do not make it illegal in a State or a community, it is not illegal; it is legal. What is wrong with that? It is up to them to make it legal or illegal, as they see fit.

Mr. ALLEN. Because the Federal law says that if it is offensive in the local community standards, then it is against the law.

Mr. ABOUREZK. That is right.

Mr. ALLEN. But here the Senator says it is legal.

Mr. ABOUREZK. Oh, no.

Mr. ALLEN. The Senator says it is a defense.

Mr. ABOUREZK. No. If it is against the local community standard, according to the Dole amendment, you are not entitled to the defense of this amendment.

Mr. ALLEN. That is not what it says.

Mr. ABOUREZK. That is exactly what it says. It makes it that way with the inclusion of the Dole amendment.

Mr. ALLEN. It says that it is a defense to a pornographer under subsections so and so, referring to the dissemination of obscene material, that dissemination of the material was legal in the State in which it was disseminated. So if the State has not acted, it is legal there and would permit a smut peddler to flood such States with obscene material.

Mr. ABOUREZK. The reason it is legal is that the State has not made it illegal. And it is up to them. It is certainly up to the State.

Mr. ALLEN. Under the present law, that defense is not available.

Mr. ABOUREZK. Let me say that it is not codified, but it is in the case law. That defense always has been available.

Mr. ALLEN. If it is in the case law, why do we need this statute?

Mr. ABOUREZK. We are attempting to recodify the Federal criminal laws.

Mr. ALLEN. Why was it necessary to add this in the committee?

Mr. ABOUREZK. In my experience, every time you recodify the Federal law, you try to put in whatever case law is available, and you do it in the committee, because that is where you do the work.

I am absolutely amazed at my colleague from Alabama coming out in favor of Federal intervention in States' rights.

Mr. ALLEN. I am in favor of Federal intervention in the dissemination of obscene material. If the Senator is not, he can follow his mentor whom he quoted earlier, Justice William O. Douglas.

Mr. President, I suggest the absence of a quorum, and it will be a live quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. WALLOP. Mr. President, will the Senator yield for a unanimous-consent request?

The PRESIDING OFFICER. A quorum call is in progress.

Mr. WALLOP. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. WALLOP. Mr. President, I ask unanimous consent that Everett Wallace, of Senator BAKER's staff, have the privilege of the floor during the consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CANNON. Mr. President, I ask unanimous consent that Bruce Eggers have the privilege of the floor during the consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, I ask unanimous consent that Pat Hoff, of my staff, have the privilege of the floor during the consideration of this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

QUORUM CALL

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk called the roll, and the following Senators answered to their names:

[Quorum No. 4 Leg.]

Abourezk	Helms	Thurmond
Allen	Kennedy	Wallop
Byrd, Robert C.	Long	Weicker
Cannon	McClure	
Eastland	Muskie	
Hart	Randolph	
Hatfield, Paul G.	Sasser	
	Scott	

The PRESIDING OFFICER. A quorum is not present.

Mr. ABOUREZK. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from South Dakota to instruct the Sergeant at Arms to request the attendance of absent Senators. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislaitve clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Kentucky (Mr. FORD), the Senator from Vermont (Mr. LEAHY), the Senator from Montana (Mr. MELCHER), the Senator from New York (Mr. MOYNIHAN), and the Senator from Arkansas (Mr. HODGES) are absent on official business.

I further announce that the Senator from Colorado (Mr. HASKELL), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Mississippi (Mr. STENNIS), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Nevada (Mr. LAXALT), the Senator from Texas (Mr. TOWER), the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I further announce that the Senator from Missouri (Mr. DANFORTH), the Senator from Pennsylvania (Mr. HEINZ), and the Senator from Vermont (Mr. STAFFORD) are absent on official business.

The result was announced—yeas 73, nays 3, as follows:

[Rollcall Vote No. 15 Leg.]

YEAS—73

Abourezk	Griffin	Nelson
Allen	Hansen	Nunn
Anderson	Hart	Packwood
Baker	Hatch	Pearson
Bartlett	Hatfield, Mark O.	Pell
Bayh	Hatfield, Paul G.	Percy
Bentsen	Hathaway	Proxmire
Brooke	Hayakawa	Randolph
Bumpers	Helms	Ribicoff
Burdick	Hollings	Riegle
Byrd, Harry F., Jr.	Huddleston	Roth
Byrd, Robert C.	Inouye	Sarbanes
Cannon	Jackson	Sasser
Case	Javits	Schmitt
Chafee	Kennedy	Schweiker
Chiles	Long	Scott
Church	Lugar	Sparkman
Clark	Mathias	Stevens
Culver	Matsunaga	Stevenson
Curtis	McClure	Stone
DeConcini	McIntyre	Thurmond
Domenici	Metzenbaum	Wallop
Eastland	Morgan	Williams
Glenn	Muskie	Zorinsky
Gravel		

NAYS—3

Biden	Garn	Weicker

NOT VOTING—23

Bellmon	Haskell	Melcher
Cranston	Heinz	Moynihan
Danforth	Hodges	Stafford
Dole	Johnston	Stennis
Durkin	Laxalt	Talmadge
Eagleton	Leahy	Tower
Ford	Magnuson	Young
Goldwater	McGovern	

So the motion was agreed to.

The PRESIDING OFFICER (Mr. ZORINSKY). With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

Mr. ALLEN. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending question is on agreeing to the committee amendment on page 172, beginning on line 17.

UP AMENDMENT NO. 1138

Mr. ALLEN. Mr. President, I call up an amendment which I have at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN) on behalf of himself, Mr. HELMS, and Mr. SCOTT, proposes an unprinted amendment numbered 1138.

Mr. ABOUREZK. May we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order. Senators will please take seats, and refrain from conversation.

The clerk may proceed.

The legislative clerk read as follows:

On page 172, line 18, strike the words "was legal" and substitute in lieu thereof "had been legalized by statute".

Mr. ALLEN. Mr. President, this amendment is offered by the distinguished Senator from North Carolina (Mr. HELMS) and myself.

We have heard a lot about the fact that if a State wanted to legalize the dissemination of obscene material, it ought to be all right. What this amendment does is say that if the dissemination of obscene material had been legalized by a statute of a State, it would be a defense, but it does remove the fact

that inaction in this area by the legislature could give rise to the claiming of this defense.

This would more or less accept the contention made by the proponents of the committee amendment that if a State wanted to do it, why not allow them to do it? I say if the legislature of a State authorizes the dissemination of obscene material, go ahead and let the defense be made in a criminal action against a pornographer.

Mr. ABOUREZK. Mr. President, I wish to ask a question of the Senator from Alabama. I would be willing to accept that amendment if he would make one change in it. That is to include language that would be construed to mean that if the State legislature repealed an existing antiobscenity statute, the defense would apply. I would not want to restrict the availability of the defense to situations in which the legislature has affirmatively endorsed sexually oriented materials.

Traditionally, as the Senator from Louisiana (Mr. LONG) said here a few minutes ago, nothing is illegal until you make it illegal; so if a law, Federal or otherwise, does not speak to an activity, that activity is presumed to be legal.

The Senator is coming in now with a new theory that you have to put on the statute books that a certain activity is legal. That has never been done before.

Mr. ALLEN. That is the reason why I am trying to do it now.

Mr. ABOUREZK. What I would like to do is include language, which I would like to work with the Senator on, which would say that if the legislature either affirmatively acts, or does not speak to the issue, or has repealed an existing statute making these materials illegal, this defense would apply. I would be very happy to accept it under those conditions.

Mr. ALLEN. I thank the distinguished Senator from South Dakota. The fallacy in that suggestion is, of course, that some State statutes have been stricken down by the Supreme Court, and then the legislature has repealed those statutes, and since they have been ruled out by the Supreme Court, that would then comply with the Senator's suggested amendment.

So I believe I will let the Senator offer his amendment to my amendment if he so desires, but I would not be willing to agree to it.

Mr. ABOUREZK. In view of that, then, I do not see why the Senate should now start adopting an entirely new legal theory of stating what is legal and what are the things we can do. Our laws tell us the things we cannot do, not the actions we can take.

Mr. ALLEN. That is exactly what the Senator is doing with his committee amendment.

Mr. ABOUREZK. Mr. President, I move that the amendment of the Senator from Alabama be laid on the table, and I ask for the yeas and nays.

Mr. NELSON. Mr. President, will the Senator withhold that for a unanimous-consent request?

Mr. ABOUREZK. Yes.

Mr. NELSON. Mr. President, I ask unanimous consent that during the further consideration of the pending legislation, Mr. Philip Ufholtz and Mr. Jeffrey Nedelman of my staff be accorded the privilege of the floor during debate and rollcalls.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ABOUREZK. Does the Senator from Alabama have anything more to say?

Mr. ALLEN. No. I think the Senator from North Carolina may have something.

Mr. ABOUREZK. Very well, I yield to him.

Mr. HELMS. I am ready to vote.

Mr. ALLEN. Were the yeas and nays ordered?

Mr. ABOUREZK. No, I withdrew the request temporarily. If the Senator is ready——.

Mr. ALLEN. I ask for the yeas and nays.

Mr. ABOUREZK. I move that the amendment be laid on the table, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Kentucky (Mr. FORD), the Senator from Vermont (Mr. LEAHY), the Senator from Montana (Mr. MELCHER), the Senator from Arkansas (Mr. HODGES), and the Senator from New York (Mr. MOYNIHAN) are absent on official business.

I further announce that the Senator from Colorado (Mr. HASKELL), the Senator from Louisiana (Mr. JOHNSTON), the Senator from South Dakota (Mr. McGOVERN), the Senator from Mississippi (Mr. STENNIS), the Senator from Georgia (Mr. TALMADGE), and the Senator from Montana (Mr. HATFIELD) are necessarily absent.

I further announce that, if present and voting, the Senator from New York (Mr. MOYNIHAN) would vote "yea."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Nevada (Mr. LAXALT), the Senator from Oregon (Mr. PACKWOOD), the Senator from Texas (Mr. TOWER), the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I further announce that the Senator from Missouri (Mr. DANFORTH), the Senator from Pennsylvania (Mr. HEINZ), and the Senator from Vermont (Mr. STAFFORD) are absent on official business.

The result was announced—yeas 46, nays 29, as follows:

[Rollcall Vote No. 16 Leg.]

YEAS—46

Abourezk	Bumpers	Chafee
Anderson	Burdick	Church
Bayh	Byrd, Harry F., Jr.	Clark
Bentsen	Cannon	Culver
Biden	Case	DeConcini
Brooke	Glenn	Domenici
Gravel	Lugar	Percy
Hart	Magnuson	Proxmire
Hatfield, Mark O.	Mathias	Ribicoff
Hathaway	Matsunaga	Riegle
Inouye	McIntyre	Sarbanes
Javits	Metzenbaum	Sasser
Kennedy	Muskie	Stevens
Long	Nelson	Wallop
	Pearson	Weicker
	Pell	Williams

NAYS—29

Allen	Hatch	Roth
Baker	Hayakawa	Schmitt
Bartlett	Helms	Schweiker
Byrd, Robert C.	Hollings	Scott
Chiles	Huddleston	Sparkman
Curtis	Jackson	Stevenson
Eastland	McClure	Stone
Garn	Morgan	Thurmond
Griffin	Nunn	Zorinsky
Hansen	Randolph	

NOT VOTING—24

Bellmon	Hatfield, Paul G.	Moynihan
Cranston	Heinz	Packwood
Danforth	Hodges	Stafford
Dole	Johnston	Stennis
Durkin	Laxalt	Talmadge
Eagleton	Leahy	Tower
Ford	McGovern	Young
Goldwater	Melcher	
Haskell		

So the motion to lay on the table was agreed to.

UP AMENDMENT NO. 1139

Mr. ALLEN. Mr. President, I have an amendment at the desk. I ask that the clerk state it and that it be considered by the Senate.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN), for himself, Mr. HELMS, and Mr. SCOTT, proposes unprinted amendment numbered 1139.

On page 172, line 19, strike the word "state" and insert in lieu thereof the following: "political subdivision".

Mr. ALLEN. Mr. President, the Senator from South Dakota says that the State ought to be able to decide whether or not the dissemination of obscene material is lawful or unlawful. What this amendment does is strike out "State" and bring it down to a more local political subdivision. If the State legislature has not acted, possibly, a city might have a city ordinance against dissemination of obscene materials or a county, having legislative powers under the State law, might have a resolution or enactment, by whatever name it might be called, outlawing the dissemination of obscene materials.

I hope the distinguished Senator from South Dakota will accept this amendment, because it does bring into play more of a community standard than does the amendment offered by the committee.

Mr. BUMPERS. Will the Senator yield for a couple of questions?

Mr. ALLEN. I am glad to.

Mr. BUMPERS. One of the things that has troubled me is that the Supreme Court has laid down the law of the land as saying that community standards will dictate whether a material is obscene or not. The committee bill, as I understand it, provides that the State can bring an action under the committee bill.

Mr. ALLEN. That is correct.

Mr. BUMPERS. Let me go through a hypothetical case, maybe we can have a better understanding on it.

Let us assume that material is printed in Chicago and shipped into the distinguished Senator's State of Alabama.

Mr. ALLEN. Right.

Mr. BUMPERS. Now, under the Supreme Court ruling, if it comes into, we will say, Selma, Ala., that could be a community standard, but the Supreme Court said that a State may constitute a community, too; is that correct?

Mr. ALLEN. Not that I know of. They have left it as community standard. I do not recall the whole State would have the same community standard, because the Senator would know that what might prevail in Little Rock as a community standard might not obtain in a rural county of his constituents.

Mr. BUMPERS. Of course, if the State enacted a statute setting up in one, two, three order what the State standards would be, that would then, under the Supreme Court decision, constitute a State community standard; would it not?

Mr. ALLEN. I am not sure of that. I am not sure of that.

Mr. BUMPERS. My problem is, the way I interpret this, and I have had difficulty voting against the Senator's amendments——

Mr. ALLEN. The Senator was able to do so, though; was he not?

Mr. BUMPERS. Yes. I struggled and finally did it.

But my problem is, I think that every prosecution has to be brought and determined by the jury before we have a community standard. I do not believe the Senate bill does anything except what the State prosecutors have a right to do now, and I cannot see how the Senator's amendment really changes that in any way.

Mr. ALLEN. I will be glad to explain.

Under the present law, the dissemination of material which is held to be offensive to community standards is violative of the Federal statute.

Now, the committee amendment, espoused by the distinguished Senator from South Dakota, says that if this is legal in a State, that is, if the State is not acting, because I think no State would affirmatively legalize obscene material, but if the State has not acted, then it is a complete defense to the criminal charge.

Now, the pending amendment is that if it were violative—if the State had not acted and is violative of local ordinance, then it would be——

Mr. BUMPERS. A defense?

Mr. ALLEN. It could not be offered as a defense under this amendment.

Mr. BUMPERS. If I understood the Senator correctly, it is slightly confusing.

As I understand what the Senator just said, he says that if it is not a State standard or State statute, then the defendant may use the fact that there is no State standard as an affirmative defense to a prosecution.

Mr. ALLEN. That is what the amendment says.

Mr. BUMPERS. But the Senator follows it up by saying that if there is no community standard, the defendant may not use the fact that there is no community standard as an affirmative defense.

Is that what the Senator said?

Mr. ALLEN. I say that if we read the amendment, it says that if it is legal in the State where the material is disseminated, it is a defense to the prosecution, which, in effect, would wipe out the community standard.

Mr. ABOUREZK. Could I try to clarify that?

Mr. BUMPERS. Happily.

Mr. ALLEN. Just let this penetrate, what I said then, that if it is legal in the State, that is, the State has not acted, then under this amendment it would not have any community standard as being in violation of Federal law because it makes it depend on whether the State has made it illegal or not.

What this amendment does is to say that even if the State has not acted, then if the community has acted by ordinance or appropriate resolution, then this defense could not be offered.

Mr. BUMPERS. The Senator says, if the State has not acted, but the community has set up standards?

Mr. ALLEN. Yes, in that community it could not be disseminated.

Mr. BUMPERS. The Senator means the obscene material could not be disseminated?

Mr. ALLEN. Could not be disseminated legally.

Mr. BUMPERS. Well, let me ask, what is wrong with that?

I know the Senator is a great States' rightist, and that States ought to have the right to determine their own destiny.

Mr. ALLEN. Because the failure of the State to act should not prejudice the right of its citizens not to be offended by a flood of obscene material.

Mr. BUMPERS. Should that not be left up to the people of that State?

Mr. ALLEN. No, it should not.

Mr. BUMPERS. Why not?

Mr. ALLEN. In this particular area, because the inactivity of the State in this area should not, as I have said, penalize the local citizens.

Mr. BUMPERS. But who are the local citizens?

Mr. ALLEN. Or keep the Federal law from being activated.

Now, that is the present law. This amendment would change the present law and make it easier for the pornographer to ply his trade.

Mr. BUMPERS. I certainly do not want to lend my name or support to anything that is going to make pornography easier to disseminate, particularly in the homes where it is not wanted.

Mr. ALLEN. Well, this affords them a defense.

Mr. BUMPERS. Put it this way. If I were Governor of my State and I came out and said, "I want the Feds to determine what's obscene in this State and not the people of this State," I would fully expect to be soundly trounced at the next election.

Mr. ALLEN. That may be. I do not know what the situation is in the Senator's State.

Mr. BUMPERS. But is the Senator not then trying to impose his personal views on each State, regardless how they feel?

Mr. ALLEN. Not in the slightest.

That is the present law and I am just seeking to keep this amendment from passing which would liberalize the vocation of the pornographer.

Mr. BUMPERS. Let me carry it a step further on a slightly different plane.

If there is no State law and no community standards, and material comes into a State or a community that, say, the local prosecutor believes is obscene, there is not anything in the committee bill to keep the Federal prosecutor from filing suit against the disseminator, is there?

Mr. ALLEN. No, there is not. But then when it comes to trial, the disseminator could offer this as a defense, this committee amendment as a defense.

Mr. BUMPERS. But would not the jury be the final arbiter as to whether or not that was a final defense, or not, because they are the final arbiter of what is the community standards?

Mr. ALLEN. I would be glad to refer the Senator to the conclusion of the committee. The footnote says that the court is the arbiter of the State law.

Mr. BUMPERS. How do we establish community standards where none have been set by ordinance, if not by trial?

Mr. ALLEN. The trouble is, this is not community standard. This is the failure of the State to act.

Mr. BUMPERS. Let me go through this again.

If the prosecutor brings this action in a community that has no standard or no State statute setting up a standard, then there is not anything to prohibit the prosecutor from indicting or filing an information against the disseminator of that material?

Mr. ALLEN. No. But then the disseminator of that material would offer this committee amendment as a defense and the case would be thrown out.

Mr. BUMPERS. Wait a minute. Would not the jury make the determination as to the community standards and whether or not that particular material violated community standards?

Mr. ALLEN. No, because it says right here that if it is legal in the State, that is a complete defense, irrespective of the community standards.

Mr. ABOUREZK. That is not the case. I will clarify this again. It is not a complete defense. It is a defense, which then makes it a jury question.

Mr. BUMPERS. That is my understanding.

Mr. ABOUREZK. The jury can convict or not convict, depending on how they interpret the law. But he can assert the defense that it is legal in the State, even if it is available in the community.

Mr. ALLEN. It is a court question, as a matter of law. Taking the theory of the Senator from South Dakota at its supposed value, that would not be applicable.

Mr. ABOUREZK. I do not see anything wrong with the Senator's amendment, with the exception of one or two minor changes with which I do not think he would disagree.

Let me cite a hypothetical question. Say that the legislature of New York State had not spoken on the question of obscenity; therefore, it would be legal in New York State. The city of Buffalo passes an ordinance making dissemination of certain materials illegal, and New York City has not spoken on it. If someone mails something from New York City

to Buffalo and the Federal authorities moved in and said, "We're going to prosecute," would the amendment of the Senator from Alabama say that they could prosecute the Buffalo transaction, or would it say that they also could prosecute any other transaction in New York, even though the material did not go into Buffalo, where it was illegal? What is the intention?

Mr. ALLEN. I think you would have to have Federal jurisdiction. That would be an intrastate matter. I do not think the Federal jurisdiction would attach.

However, on the matter of the defense, as to whether it was a jury question or a court question, that is immaterial. Why give them any type of defense, whether it is to be decided by the jury or by the court? That is the point I am making. This is handing him something on a silver platter that makes it easier for him to defend his actions.

In the intrastate situation pictured by the Senator from South Dakota, the city would be the one to prosecute on that, if the city had an ordinance. The State would not.

Mr. ABOUREZK. I think the Senator will agree that if something is sent through the mail, the Federal authorities have jurisdiction. But even if the Senator does not agree with that, let us assume it is an interstate transaction. If something is mailed into Buffalo, where the ordinance says it is illegal, and something is mailed into New York, where it is legal because they have not passed on it one way or the other, what would the Senator's amendment do with regard to either of those situations?

Mr. ALLEN. My amendment, in the absence of State action, would allow the community to bar and make illegal the dissemination of obscene material.

Mr. ABOUREZK. In the example I cited, the only time this defense would not be available would be in the Buffalo instance, not in the New York City instance. Is that correct?

Mr. ALLEN. It would be available on all accounts of the violation of the Buffalo ordinance, yes. The defense would not be available, no. The prosecution would lie.

Mr. ABOUREZK. Would the defense be available in New York City, where it has not been made illegal, under the Senator's amendment?

Mr. ALLEN. No, the defense would not be available, in my judgment.

Mr. ABOUREZK. In New York City?

Mr. ALLEN. It would not be available in New York City, because if it came under another venue statute, if that was the main place of business, you could prosecute him in New York, under the venue statute here. That would be an offense in either place.

Mr. ABOUREZK. I do not think the amendment of the Senator from Alabama would operate that way. As I understand his amendment, he intends to say that it is up to each local subdivision as to whether they are going to make it illegal or not.

Mr. ALLEN. The offense is there. How do you get out from under it? You could not get out from under it because Buffalo has a statute against it, and you could not get out from under it in New York, in my judgment, because you have the venue statute giving you the right to prosecute a disseminator of obscene material at his main place of business.

Mr. ABOUREZK. Let me state it a different way. Let us say that it is legal to disseminate such material in the State of Arkansas and it is legal to do so in the State of New York, except that Buffalo has passed an ordinance making it illegal.

Mr. ALLEN. If it does not go into Buffalo, there would be no violation, under the amendment of the Senator from South Dakota.

Mr. ABOUREZK. New York City has made it legal. If the fellow in Arkansas mails such material to Buffalo, under the amendment of the Senator from Alabama, he is deprived of that defense.

Mr. ALLEN. That is correct.

Mr. ABOUREZK. But if he mails it from Arkansas to New York City, what would be the situation, under the Senator's amendment?

Mr. ALLEN. New York City would not be involved.

Mr. ABOUREZK. Would the defense be available to the person in Arkansas?

Mr. ALLEN. Yes, because it does not offend the statute.

Mr. KENNEDY. I move the amendment, with that understanding, Mr. President.

Mr. ALLEN. What is that?

Mr. KENNEDY. I just want to move the amendment, after that last statement. I intend to support it.

Mr. ABOUREZK. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. BUMPERS. Mr. President will the Senator withhold that for just a moment?

The PRESIDING OFFICER. Will the Senator withhold the request for the quorum call?

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ABOUREZK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ABOUREZK. Mr. President, if I might have the attention of the Senator from Alabama, the amendment that he is offering changes to a minor extent the defense which is in the committee amendment in the legislation. After thinking it over and asking a couple questions, I do not have a strong objection to accepting the amendment. Senator WALLOP, who is managing the other side of the aisle, does not have any objection to it.

But the point is that if we are going to water it down even to that minor extent we would have to have some kind of assurance that he would let the committee amendment come to a vote. As it is now the Senator from Alabama is delaying the vote on it because I think he rightfully sees that he is going to lose on it. I have told him and I want to state now for the record that I would be very willing to accept the amendment if he would let the committee amendment come to a vote. If not, I do not see any reason to water it down. I just wish to ask the Senator what his intentions are.

Mr. ALLEN. The Senator has pretty well killed the effectiveness of his plea that the committee amendment come up for a vote when he said that it will just change the amendment in a very small degree, indicating with his fingers about a quarter of an inch.

Mr. ABOUREZK. It is about a half inch, roughly.

Mr. ALLEN. He indicated it was such a small amendment that he could take it because it hardly changed it at all, about a quarter or a half of an inch as he indicated with his finger.

So if the Senator said, "I sure hate to take this amendment because it does change the scope of the committee amendment a great deal, it does protect local communities that pass ordinances against pornography," fine but since it makes such a minute change I believe we better continue to discuss it after the Senator moves to table the amendment as I assume he is going to.

Mr. ABOUREZK. Let me say this, that the half inch that I have indicated is only on this amendment. If the Senator decides to go on and offer a series of half-inch amendments we are going to have a couple yards of amendments here before too long. I understand how the Senator operates over there very well, and I am not about to willingly take part in it.

So I would have to say that unless the Senator wants to let the committee amendment come up for a vote I cannot accept it. If the Senator wants to discuss it, fine.

Mr. ALLEN. I am willing to have a vote on the amendment, and I do not make any commitment about allowing anything to come up for a vote and we will just have to cross that bridge when we get to it.

Mr. ABOUREZK. All right, if we can get some Senators here.

Mr. ALLEN. I have no objection to the Senator making the motion to table, and I just leave it up to the Senate. If the Senate wants to protect local communities, fine. If it does not, we will consider another aspect of the amendment.

Mr. ABOUREZK. If we can get enough Senators here to get the yeas and nays I will be happy to have a vote.

Mr. WALLOP. Does the Senator want the yeas and nays or let us see what else is in the bag?

Mr. ABOUREZK. We could have a division.

Mr. ALLEN. Mr. President, I call for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. ALLEN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Mr. President, I modify my amendment by adding after "political subdivision" the words "or locality."

And the distinguished manager of the bill has indicated he would favor that. At the same time, in the event this bill ever goes to conference, which is doubtful that we might have support for the amendment in conference, I still request the yeas and nays.

The PRESIDING OFFICER. Without objection the amendment is so modified.

Mr. ALLEN. I call for the yeas and nays.

Mr. ABOUREZK. Mr. President, Senator WALLOP and I have discussed it, and we have agreed that we will accept that amendment so we can just——

Mr. ALLEN. Mr. President, I call for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. WALLOP. We are going to vote.

Mr. ABOUREZK. We could have a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from Alabama. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri, (Mr. EAGLETON), the Senator from Kentucky (Mr. FORD), the Senator from Vermont (Mr. LEAHY), the Senator from Montana (Mr. MELCHER), the Senator from New York (Mr. MOYNIHAN), the Senator from California (Mr. CRANSTON), and the Senator from Arkansas (Mr. HODGES) are absent on official business.

I further announce that the Senator from Colorado (Mr. HASKELL), the Senator from Louisiana (Mr. JOHNSTON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Mississippi (Mr. STENNIS), and the Senator from Montana (Mr. HATFIELD) are necessarily absent.

I further announce that, if present and voting, the Senator from Iowa (Mr. CULVER) and the Senator from New York (Mr. MOYNIHAN), would each vote "yea."

MR. STEVENS. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Nevada (Mr. LAXALT), the Senator from Texas (Mr. TOWER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I further announce that the Senator from Missouri (Mr. DANFORTH), the Senator from Pennsylvania (Mr. HEINZ), and the Senator from Vermont (Mr. STAFFORD) are absent on official business.

The result was announced—yeas 74, nays 0, as follows:

[Rollcall Vote No. 17 Leg.]

YEAS—74

Abourezk	Gravel	Packwood
Allen	Hansen	Pearson
Anderson	Hart	Pell
Baker	Hatch	Percy
Bartlett	Hatfield,	Proxmire
Bayh	Mark O.	Randolph
Bentsen	Hathaway	Ribicoff
Biden	Hayakawa	Riegle
Brooke	Helms	Roth
Bumpers	Hollings	Sarbanes
Burdick	Huddleston	Sasser
Byrd,	Inouye	Schmitt
Harry F., Jr.	Jackson	Schweiker
Byrd, Robert C.	Javits	Scott
Cannon	Kennedy	Sparkman
Case	Long	Stevens
Chafee	Lugar	Stevenson
Chiles	Magnuson	Stone
Church	Mathias	Talmadge
Clark	Matsunaga	Thurmond
Curtis	McClure	Wallop
DeConcini	Metzenbaum	Weicker
Domenici	Morgan	Williams
Eastland	Muskie	Zorinsky
Garn	Nelson	
Glenn	Nunn	

NAYS—0

NOT VOTING—25

Bellmon	Griffin	McGovern
Cranston	Haskell	McIntyre
Culver	Hatfield,	Melcher
Danforth	Paul G.	Moynihan
Dole	Heinz	Stafford
Durkin	Hodges	Stennis
Eagleton	Johnston	Tower
Ford	Laxalt	Young
Goldwater	Leahy	

So Mr. ALLEN's amendment UP 1139, as modified, was agreed to.

UP AMENDMENT NO. 1140

Mr. ALLEN. Mr. President, I call up an amendment which I have at the desk, and ask that it be stated.

The PRESIDING OFFICER (Mr. STEVENSON). The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN), for himself, Mr. SCOTT, and Mr. HELMS, proposes an unprinted amendment numbered 1140:

On page 172, line 17, strike entire line and substitute the following:

"(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecutor under subsection"

Mr. ALLEN. Mr. President, I appreciate the unanimous vote of the Senate on the preceding amendment, which would make unavailable to a pornographer the defense of this committee amendment where the dissemination of obscene materials was illegal in a political subdivision or locality in which it was disseminated, whereas, under the committee amendment, if it was legal in the State, then it would be legal everywhere. The amendment would allow the local political subdivisions to outlaw the dissemination of obscene material, and would deprive the defendant of the availability of the defense provided by the amendment.

The thought occurs to me that in our procedure here in the Senate—and I wish to make a comment on this point not just as to this amendment, but as to all amendments—there is tremendous power and influence in the managers of a bill. Whereas other amendments that I have offered with respect to this committee amendment have been soundly defeated because the managers of the bill said that they should be defeated, then, lo and behold, the manager of the bill says this amendment is all right and it gets a unanimous vote.

I am just wonderng if that is a very good practice that we have here in the Senate, to run by the manager of the bill and ask, "Well, what about this amendment?" It indicates that Senators are not reaching independent judgment on these issues. I wonder if that is the right procedure for us to follow. Other amendments, if the distinguished manager of the bill had said they were good, would have been passed.

I am not going to delegate my decisions on these issues to the manager of any bill pending before the Senate. I feel it is my duty to make an independent judgment, and, after learning the facts regarding an amendment, to vote independently of the recommendatio of the managers of the bill.

It would be pretty bad practice not to consider these amendments, and I am talking about amendments generally, on their merits rather than on some pretext of the managers of the bill.

The amendment we have before the Senate now makes what, I assume the distinguished Senator from South Dakota would say, is a minor adjustment of the amendment, but, really, it is an important amendment.

On this same page, page 172, there is this committee amendment which says that the fact that the dissemination of obscene material has not been made unlawful in a State would be a defense in a prosecution for disseminating obscene material in such a State.

Right under that come affirmative defenses. The difference between a defense and an affirmative defense is that the defense makes it easier on the defendant and harder on the prosecution. Under a defense pleading this committee amendment it would be incumbent upon the prosecutor to show that the dissemination of obscene material was illegal in the State, political subdivision, or locality in which it was disseminated. The burden would be on the State.

In the affirmative defense, the burden would be on the defendant, the pornographer, to show that the dissemination of obscene material is legal. So it shifts the burden of proving the existence of the status that would constitute a defense. Under the comittee amendment it would be up to the prosecution to show that the dissemination of obscene material is illegal where it was disseminated.

This makes it incumbent upon the defendant to show that it was legal where disseminated. That makes quite a difference.

I have discussed this with the distinguished manager of the bill. I hope with his blessing, in accordance with the procedure in the Senate, this amendment will receive a favorable vote.

Mr. SCOTT. Will the Senator yield?

Mr. ALLEN. I will be glad to yield.

Before I yield, I might say the distinguished Senator from Virginia and the

distinguished Senator from South Carolina will speak to the amendment.

Mr. SCOTT. Mr. President, I thank the distinguished Senator from Alabama for yielding. I might say I have been specifically interested in his comments about each Senator having the obligation to vote the way each individual Senator felt was right, and to try to first obtain knowledge of an amendment and then vote his conviction, rather than to blindly follow the leadership.

It calls to mind recent items in the newspaper with regard to the Panama Canal where it said that the leaders on both sides of the aisle, the Democratic leader and the Republican leader, have indicated the action they felt should be taken.

I have taken a poll of the people in Virginia with regard to the Panama Canal. I find the poll is not exactly the way my mail has been running. My mail has been running about 95 percent against the treaty.

I sent this questionnaire to every registered voter, Democrat and Republican, in two of the congressional districts, and then to bipartisan groups not selected for their philoshophy or their parity affiliation in the rest of Virginia.

Eighty-seven percent were opposed to this treaty and 13 percent were in favor of it.

That indicates that my mail is not running exactly right.

The reason I mention this is that the distinguished Senator from Alabama talked about following the managers of the bill. I could not help but think of the parallel of following the leaders here in the Senate. I would venture to predict that come election day the people will have the ultimate say on the Panama Canal and that we are going to lose some of our Senators who have chosen to run for reelection. I have not chosen to run for reelection, but if I had chosen I would be on the side of the people. I think the Members of the Senate might think about being on the side of the people rather than on the side of the leadership.

In this country, the people are sovereign and the people ultimately rule.

I know I have digressed a bit from the subject which is immediately before us.

Mr. THURMOND. Will the Senator yield?

Mr. ABOUREZK. Will the Senator yield for a question?

Mr. SCOTT. Yes.

Mr. ABOUREZK. The Senator is not accusing me of being in the establishment, I hope.

Mr. SCOTT. No; I am just saying this because of the statements made by the Senator from Alabama.

I will be glad to yield to my friend from South Carolina.

Mr. THURMOND. Mr. President, I commend the able and distinguished Senator from Virginia for the statement he has just made. I would like to state that in my mail from December 10 to January 10, 439 communications were received in opposition to the treaties. Only six favored the ratification. Those are from different States in the Nation. It is nationwide.

In South Carolina, the communications received had 329 opposing the ratification and only 1 favoring it.

Mr. President, this is in line with the sentiment we have been receiving on these treaties for a number of months. In fact, my overall mail since this question first came up is running about 96 percent opposed to ratification of the treaties. I just wanted to mention that to the able Senator from Virginia.

Mr. SCOTT. I believe that come election day we will find that a lot of politicians have become educated rather than the people being educated. As the President said, he was going to educate the people. I believe the President will be better educated after election day in November.

I thank the distinguished Senator for yielding.

Mr. ALLEN. I thank the distinguished Senator from Virginia for his very appropriate comments. I might carry the discussion just a little bit farther, inasmuch as the rule of germaneness does not apply at this time.

This Senator did see a parallel between the upcoming action on the Panama Canal treaties and amendments thereto and the following of the leadership in that instance and the following of the committee managers in this instance.

I might say that I have noticed that, where the managers are split in their views, by and large, Senators follow the manager of the bill rather than the ranking minority leader, which seems to be the practice.

Senators are included frequently to let the leadership do their thinking for them. We see coming up now an amendment by the joint leadership.

I remember, back when I first came to the Senate, something that I always dreaded to see coming, when we had some explosive legislation, was a joint leadership amendment—the Scott-Mansfield amendment or Mansfield-Scott amendment. When they get together, it is pretty hard to head them off.

I am glad to see the distinguished majority leader come in. We are discussing, the Senator will be surprised to hear, I imagine the Panama Canal and the upcoming discussion of that. I might hasten to say that I am going to discuss this for just a very few minutes. I am not trying to prolong the discussion.

I note in the press that we are going to see a joint amendment by the two leaders. We were discussing, I say to the distinguished majority leader, the fact that, whereas, I offered one amendment to the committee amendment and it was overwhelmingly defeated on the recommendations of the managers of the bill; then, when the managers of the bill said my next amendment was all right, it passed unanimously. I was just questioning this practice that we have in the Senate. I guess I have been guilty of it on occasion, though I try not to be.

We are too prone, without studying the merits of a measure, to ease up to the managers of the bill—the manager on our side of the aisle—and ask for recommendations.

Mr. ROBERT C. BYRD. Will the distinguished Senator yield?

Mr. ALLEN. Yes, I am delighted to yield.

Mr. ROBERT C. BYRD. I have been guilty of that, myself, except I do not ease up to the managers of the bill, I ease up to the Senator from Alabama. I have following his leadership on these votes and I hope the Senator will not criticize me for that.

Mr. ALLEN. I thank the distinguished majority leader. I recommend a continuation of that policy.

Mr. MAGNUSON. Let us have a vote.

Mr. ALLEN. We are going to find many followers of the distinguished majority leader, I feel sure.

On the recommendation of one of our senior Senators, I yield the floor at this time. I believe the distinguished floor manager of the bill wishes to make a recommendation with respect to the amendment. I believe it will carry a lot of weight.

Mr. ABOUREZK. The minority has discussed this with us and we have decided to accept the amendment that is presently pending. We ask for just a voice vote on it. We are ready for a vote.

I advise the Senators that there will be a rollcall on the committee amendment as amended.

Mr. THURMOND. Mr. President, this amendment meets with our approval.

The PRESIDING OFFICER. The question is on agreeing to the amendment to the committee amendment.

The amendment to the committee amendment was agreed to.

Mr. ABOUREZK. The yeas and nays have been ordered on the committee amendment as amended; is that correct?

The PRESIDING OFFICER. The Senator is correct.

The question is on agreeing to the committee amendment, as amended. The yeas and nays have been ordered. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Kentucky (Mr. FORD), the Senator from Vermont (Mr. LEAHY), the Senator from Montana (Mr. MELCHER), the Senator from New York (Mr. MOYNIHAN), and the Senator from Arkansas (Mr. HODGES) are absent on official business.

I further announce that the Senator from Texas (Mr. BENTSEN), the Senator from Colorado (Mr. HASKELL), the Senator from Louisiana (Mr. JOHNSTON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Mississippi (Mr. STENNIS), and the Senator from Montana (Mr. HATFIELD) are necessarily absent.

I further announce that, if present and voting, the Senator from New York (Mr. MOYNIHAN), would vote "yea."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLD-

WATER), the Senator from Nevada (Mr. LAXALT), the Senator from New Mexico (Mr. SCHMITT), the Senator from Texas (Mr. TOWER), and Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I further announce that the Senator from Missouri (Mr. DANFORTH), the Senator from Pennsylvania (Mr. HEINZ), and the Senator from Vermont (Mr. STAFFORD) are absent on official business.

The result was announced—yeas 59, nays 14, as follows:

[Rollcall Vote No. 18 Leg.]

YEAS—59

Abourezk	Griffin	Packwood
Anderson	Hart	Pearson
Baker	Hatfield,	Pell
Bayh	Mark O.	Percy
Biden	Hathaway	Proxmire
Brooke	Huddleston	Randolph
Bumpers	Inouye	Ribicoff
Burdick	Jackson	Riegle
Byrd,	Javits	Roth
Harry F., Jr.	Kennedy	Sarbanes
Cannon	Long	Sasser
Case	Lugar	Sparkman
Chafee	Magnuson	Stevens
Chiles	Mathias	Stevenson
Church	Matsunaga	Stone
Clark	McClure	Talmadge
DeConcini	Metzenbaum	Wallop
Domenici	Morgan	Weicker
Eastland	Muskie	Williams
Glenn	Nelson	
Gravel	Nunn	

NAYS—14

Allen	Hansen	Schweiker
Bartlett	Hatch	Scott
Byrd, Robert C.	Hayakawa	Thurmond
Curtis	Helms	Zorinsky
Garn	Hollings	

NOT VOTING—26

Bellmon	Goldwater	McGovern
Bentsen	Haskell	McIntyre
Cranston	Hatfield,	Melcher
Culver	Paul G.	Moynihan
Danforth	Heinz	Schmitt
Dole	Hodges	Stafford
Durkin	Johnston	Stennis
Eagleton	Laxalt	Tower
Ford	Leahy	Young

So the committee amendment, as amended, was agreed to.

The PRESIDING OFFICER. The question recurs on the committee amendment on page 76, lines 19 through 24.

Mr. McCLURE. Mr. President, a parliamentary inquiry. Is it in order to offer an amendment? I ask unanimous consent that it be in order for the junior Senator from Idaho to offer a series of amendments.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

UP AMENDMENT NO. 1141

Mr. McCLURE. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE), for himself, Mr. STEVENS, Mr. WALLOP, and Mr. CHURCH, proposes an unprinted amendment numbered 1141.

Mr. McCLURE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 166, line 3, add after the words "crime of violence" the following: ", other than a misdemeanor that consists solely of damage to property and that does not place another person in danger of death or serious bodily injury,".

Mr. McCLURE. Mr. President, the section we are dealing with in this code is one dealing with the mandatory sentencing provision for crimes committed in which explosive devices or firearms are employed and a new Federal offense being established which will, in the minds of many, including the junior Senator from Idaho, provide a deterrent to the use of explosive devices or firearms in the commission of crime.

I have sponsored similar legislation for a long time, and I think that this is a constructive addition to the criminal code of the United States.

My amendment seeks to limit the application of the new Federal offense and mandatory sentencing to those kinds of crimes that are directed against persons, that there is a danger to the health—bodily injury or death—of individuals, rather than simply the destruction of property or the potential destruction of property.

I have been in consultation with both the majority and minority floor managers of this bill and with the Department of Justice with regard to narrowing the scope of the provision in the bill so that it cannot be used indiscriminately or perhaps against the kinds of offenses which many of us would not like to see caught within the scope of a new Federal offense or within the scope of mandatory sentencing.

This amendment is one of three that I will offer which deal with this question directly. The amendment as I have outlined it would more carefully limit, I think, but within the scope that is intended by the committee action; and, as I understand, it has the support of both the majority and the minority. I will let them speak for themselves on that. We did discuss that at some length last night, so that we could come to the floor in substantial agreement, rather than coming to the floor with a disagreement as to what the scope of this penalty should be.

Some time ago, I introduced a measure similar to the one that the committee has reported to the floor; and I immediately got the request from some people who felt that they had legitimate rights but that certain things were being challenged in the courts as being excessive use or perhaps in which there is not casual connection between the crime and the possession of a firearm.

I will mention the other amendments briefly at this time. They have not been offered nor read, although copies have been given to the committee staffs and the floor managers of the bill.

Two of the remaining three amendments I will offer deal with the extension of the same kind of problem. The second of the amendments will deal with the question of whether or not the device or firearm has been transported in interstate commerce. Does the Federal Government have jurisdiction over the offense?

There are two lines that Congress has followed: One, in the case of possession of firearms by a person who has been convicted of felony, in which the courts have found that the congressional intention was that there be no time limit, no connection in transportation and possession in order to extend Federal jurisdiction to that prohibition. But the general rule is, as will be restated by my amendment, that there has to be a connection between the transportation in interstate commerce and the present use of that weapon in the commission of crime. My amendment simply will restate what the current law is with regard to the extension of Federal jurisdiction because of the interstate commerce connection.

The third amendment dealing with this question, which has not been lodged at the desk but which I will send to the desk in due course, deals with the legitimate right of self-defense. A person who believes himself to be in the imminent danger of bodily harm has a right under the Federal and State statutes, in almost every instance, to defend himself against that violence. However, there are limitations on the ability to use force to defend yourself. If you use deadly force and it is found that you used force which was excessive considering the danger or the likelihood of danger, then the defense of self-defense may not be applicable. In that instance, a person who honestly believed that he was in imminent danger of bodily harm to himself by someone bound upon committing a crime may find that the defense he raises of self-defense is set aside because the court or the jury will determine that he used excessive force.

It seems to me that there should be a way in which that person would not be subjected to the additional penalty of a new offense and the mandatory penalty of a 2-year sentence, which is required under this section of the code.

Working with the majority and minority staffs and the Department of Justice last night and this morning, we have contrived language which I think does bridge the gap and allows a bar to the mandatory sentencing, even though the person may have used excessive force, if he had reasonable cause to believe that he was subjected to violence to his person or to property if he did not use force in defending himself.

This amendment, I think, is carefully drawn. I think it does fit into that gap between the total defense and the total lack of defense by barring the mandatory jail sentence so that the judge may, even though there is an additional defense, rule that the mandatory jail sentence may not be imposed under suitable circumstances.

Mr. President, I do not think any of us want to see persons in defense of themselves, their homes, their habitation, their place of business, or their property use excessive force and take the life of another human being needlessly.

This is a very difficult and a very tenuous balance between the right of an individual to live in freedom and security in our society and the right of

someone else to have his life secure even though he may be in circumstances that raise doubts in the minds of others as to his intentions to violate the security and the rights of the individual being threatened.

I think of the instance of a young secretary in Washington, D.C., concerned as many are here about assaults upon the person. Maybe in the area in which she is living there have been several such assaults in a brief period of time and her consciousness is very heightened by the fact that that has occurred. Suddenly in the middle of the night she is aware of somebody trying to break into her apartment and she may in that circumstance have a legitimate fear for her own safety. The law should not require that she inquire of the persons break-in through the window what their motive is. Is it only robbery? Is it only burglary or do they have some other sinister motive in mind against which she would have the right to use deadly force if indeed it was a fact. I do not want to see that young woman placed in the danger of having an additional offense and a mandatory jail sentence in the event someone else in detached circumstances at a later time, judging the reasonableness of her action in defense of herself, says, "You must go to jail for 2 years because you defended yourself and you were wrong in doing it."

I do not want to say to the aged pensioners, who in many of the areas of many of our cities in this country find themselves the target of repeated assaults and theft of their pension checks, who undertake to defend themselves, and many do within their own home or their own apartment live in fear, where they barricade themselves at night behind locked doors fearing what may happen before the morning. They find themselves again in the same circumstance with somebody attempting to break in and they are weak, they are alone, they are afraid, and they seek to defend themselves. They should not under those circumstances be required to run the additional hazard of not only a new offense under a Federal statute but also, if they are found to have used excessive force not warranted by the circumstances, to be faced with a mandatory jail sentence of 2 years. I do not think anyone really under those circumstances wishes that they should do so.

There is the instance where a store owner, a small shop owner, is struggling to keep his head above water. He has been the victim of repeated robberies in his store, so he undertakes to stop that robbery in a way in which the police cannot always do and undertakes to take action for himself and by himself to obstruct the effort of that would be robbery to deprive him of his livelihood and his ownership of property. Then by later standards, someone else under other circumstances makes a determination that he has used excessive force. I do not want to see that store owner subjected to not only an additional Federal penalty but also the imposition of a 2-year mandatory jail sentence.

I think this amendment which I will offer tries to draw that fine line between the total defense of self-defense and because of a finding of excessive force the absence of validity of the self-defense plea.

I think each of these three instances dealing in this very difficult area of individual freedom versus the right of society to live in security does move toward the appropriate balance, and I hope that each of these three amendments will be approved by both the majority and minority.

The fourth amendment, cosponsored by myself and others, which I will offer, which again has not been sent to the desk but will be, deals with the restatement of existing law with respect to the exemption of black power purchases. It is necessary because the Treasury Department in the enforcement of the existing law has sought to impose regulations that go specifically against the will of Congress as stated in the exemptions. In spite of the fact Congress has stated it is an exemption, the Treasury Department has said Congress did not intend it to be an exemption and they seek to write regulations dealing with regulations where there was an exemption. And this is not a change in law. This is simply a restatement of the law, which was already adopted by Congress and which is on the statute books today, in an effort to get Treasury to conform to the existing statute the way it is written.

Mr. President, I am happy to yield to the floor managers of the bill at this time if they have comments on any one of these four amendments.

Mr. KENNEDY. Mr. President, on behalf of the committee I am prepared to accept all four amendments, although I have grave reservations concerning one of them, the black powder amendment. Except for that one, the amendments have been carefully drawn to deal with areas of concern.

One, as the Senator pointed out, resolves the question of mandatory sentencing and self-defense. It seems to me to be that is not an area S. 1437 is attempting to reach. It seems to me that the amendment deals with that particular issue and deals with it effectively.

(Mr. RIEGLE assumed the chair.)

Mr. KENNEDY. The Senator continues with a technical amendment, which is entirely acceptable, to retain the current law concerning "shipped or received."

It is entirely acceptable by the committee to retain the language "shipped or received."

The third amendment again concerns the application of mandatory sentencing. It would limit such application to felonies, and also to misdemeanors to involving harm to persons, not property.

I am aware of the reasons why the Senator has felt that amendment would be worthwhile and I accept it.

Black powder, however, is another matter.

I would like to ask the Senator this question. I understand this eliminates the requirements of affidavits. Could the Senator tell us if there have been any instances of the use of black powder in explosions or terrorism or any activities the Senator knows about in the last year or so?

Mr. McCLURE. Mr. President, I would respond to that question by saying I know of none. As a matter of fact, black powder, being a rather unique explosive, is historical primarily in its use. It is used by people who want to recreate something that was used in the past. For instance, the people who, in Bicentennial celebrations, were trying to have some reenactment of Revolutionary scenes in which black powder was used, found it difficult to get black powder.

But there are far more readily available and far more powerful explosives and, therefore, there would be no reason for anyone to select this as their means.

Mr. KENNEDY. But this amendment causes me problems. Would its acceptance mean that there would be no way to learn the name and address of an applicant?

Mr. McCLURE. Well, I assume they could get that information. I am not sure they would have the right to require the recordkeeping which would be done because there is an exemption in existing statute, which this seeks to restate, from those activities. That is the major reason for the amendment that Congress set for sporting purposes, and because it is used primarily for sporting purposes we, therefore, exempt them from the requirements of the statute, including those requirements for information concerning the purchaser.

The reason that becomes important, I would say to my friend from Massachusetts, is that for most dealers in the United States who do sell black powder to sporting enthusiasts those purchases are a matter of accommodation. There is very little, there is very small, volume of sales involved, and very little profit to be made. The dealer just simply is not going to stock and sell it if he has to comply with all of the recordkeeping requirements of existing statute, and what in other instances recordkeeping requirements have been exempted by Congress for this particular kind of activity.

So I would not want to mislead the Senator by saying "Well, they are free to impose all kinds of regulations," because that is exactly what we are trying to say they are not free to do.

Mr. KENNEDY. But you say they could get the information. As the statute says now:

> (5) commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms.

I understand the Senator's wanting to get rid of the affidavits. Quite frankly, if it were up to me, I would not feel that is an undue burden. But I am very much aware of what the Senator has said on this issue. What I am trying to get at in terms of the affidavits is this—Will their elimination preclude all records in this area? It may be necessary to, at the very least, secure the name and address of the person to whom it is being sold.

Mr. McCLURE. Let me say to the Senator if I were seeking to build an

explosive device I would not go and buy black powder. I would go down to the local garden store or farm supply store and buy some ammonium nitrate fertilizer, and I would combine that with some diesel fuel, and I would build an explosive that is more powerful than nitroglycerin. I would not fool around with black powder in quantities of less than 50 pounds if I were really intent on doing something.

That is the reason why the recordkeeping requirements simply do not make any sense because people who are buying this are certainly not going to be using it for that purpose. It is just not an efficient tool to be so used.

It would be somewhat akin to the burden of requiring the name and address of somebody who would use anything else of a relatively innocuous nature for a criminal purpose, and the ATF has found that to be a little—they would like to get this information, but the information was much like that which was required in the recordkeeping on sales of .22 caliber ammunition. There is such a large volume of .22 caliber ammunition that the records filled rooms, and it became useless, and the recordkeeping that has been required becomes useless in this area as well, and that is why Congress enacted a specific exemption dealing with this product in these quantities stating that no such requirements are to be made.

Mr. KENNEDY. Mr. President, normally I would object to this amendment, but in an effort to avoid controversy and undercut the fragile compromise we have entered into, I have no objection to the amendment. I ask unanimous consent that the amendments be considered en bloc.

Mr. McCLURE. Mr. President, I will send the other three amendments to the desk and ask that they be reported.

The PRESIDING OFFICER. Without objection, they will be in order and they will be considered en bloc.

Mr. STEVENS. Have all the amendments been reported?

The PRESIDING OFFICER. It is the understanding of the Chair they have all been reported en bloc in one batch and are now ready for disposition.

Mr. KENNEDY. And the unanimous consent for them to be considered at this time——

The PRESIDING OFFICER. Has been granted.

The clerk will report the amendments.

The second assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) for himself, Mr. STEVENS, Mr. WALLOP, Mr. CHURCH, and Mr. HATHAWAY proposes as part of UP amendment No. 1141:

On page 165, line 10, delete the words "or has been transported" and insert in lieu thereof, the following "shipped or received"

On page 165, line 10, delete the words "or has been transported" and insert in lieu thereof the following "shipped or received."

The Senator from Idaho (Mr. McCLURE) for himself, Mr. STEVENS, Mr. WALLOP, Mr. CHURCH, Mr. HELMS, and Mr. HATHAWAY proposes as part of UP amendment No. 1141:

On page 166, line 31, delete "or".

On page 166, line 33, delete the period and insert a semicolon and the following: "or the defendant establishes by a preponderance of the evidence that he committed the offense based upon a good faith belief that he was acting to protect a person or property from conduct constituting a felony, although not under such circumstances as would constitute a defense to prosecution.".

The Senator from Idaho (Mr. McCLURE) for himself, Mr. BAYH, Mr. STEVENS, Mr. WALLOP, Mr. CHURCH, and Mr. HATHAWAY proposes as part of UP amendment No. 1141:

Page 363 line 12 following the words "is amended by" add ": (A)" and after the last sentence, delete the period, add a semicolon, and add the following: "(B) Except that the Secretary may not prescribe regulations that require purchasers of black powder under the exemption provided under Section 1106 (a) (5) to complete affidavits or forms attesting to that exemption.".

BLACK POWDER AMENDMENT

Mr. STEVENS. Some time ago the Congress passed a law which exempted persons who buy small amounts of black powder which is intended to be used for recreational, cultural, or sporting purposes from the burden of paperwork and redtape which is required to buy large amounts of explosives.

Unfortunately, the Bureau of Alcohol, Tobacco, and Firearms did not fully understand the purpose of the exemption and of the word "intended." They have interpreted this to mean that any person who buys these small amounts of the powder must fill out a myriad of forms concerning their "intended use." This has caused much paperwork and overburdensome procedures which must be waded through by the individual making the purchase.

This amendment attempts to deal with that very problem. It prevents the Bureau of Alcohol, Tobacco, and Firearms from prescribing regulations which require purchasers of black powder under the exemption provided for in section 845 (a) (5) to complete affidavits or forms attesting to that exemption.

I believe that in passing this amendment we are establishing the original intent of the Congress.

LEGITIMATE SELF-DEFENSE

This amendment deals with the mandatory sentencing provisions of the proposed Criminal Code revision. As I have stated many times before, I believe that if a person is convicted of the offense of using a firearm to commit a crime which involves the threat to human life, he or she should be given a mandatory prison sentence of at least 2 years. However, I believe that we should be very careful to prevent the mandatory sentencing provisions from being used to harass law-abiding gun owners.

Therefore, I believe that those persons who use a firearm in self-defense and can prove by the preponderance of the evidence that they had reasonable cause to believe that a felony was about to be committed should be exempt from the 2-year mandatory sentencing provision under this section.

This amendment would not excuse such people from State, local, or Federal laws under which they might fall. It would simply prevent them from falling under the provisions of this section and making operative the mandatory 2-year sentence for the additional and separate offense of using a firearm.

I hope that my colleagues will see fit to agree with Senator McCLURE and me on this issue.

EXEMPTS MISDEMEANOR FROM 2-YEAR SENTENCE

I strongly believe that if a person is convicted of the offense of using a firearm to commit a crime which involves the threat to human life he or she should be given a mandatory sentence of 2 years or more for the misuse of a firearm. I believe that this is the only way of cutting down on the misuse of firearms. The criminal would be dealt with quickly and severely whereas those law-abiding citizens who use their guns for legitimate purposes could safely continue to do so. For this reason I support this section of the Criminal Code.

However, the section, as presently written, would also impose a 2-year mandatory sentence on someone who commits what seems to me to be a rambunctious type of crime, however wrong, where there is no danger to human life. For example, someone who shoots at a Federal sign would be sent to jail for 2 years. I do not believe that that person, however misguided, should have to serve a mandatory jail sentence when many other dangerous criminals roam the streets. It is for this reason that I hope my distinguished colleagues will see the wisdom in this proposed amendment. If accepted, this amendment will exempt from the mandatory sentencing provision under this section, those people who misuse firearms in misdemeanors which involve only the destruction of property where there is no danger to human life.

The amendment strikes at the heart of the crime problem while eliminating the possibility of misuse of the mandatory sentencing provisions.

Mr. President, I commend my good friend from Idaho. Our staffs have been working together for several days on these matters, and he joined with me in the amendments that I previously offered to the bill.

We have tried our best to see to it that the intent of the existing law is maintained in the codification or recodification of this criminal code.

These amendments that he has offered now, particularly the black powder amendment, and I also think the amendment which deals with the exemptions from the 2-year sentence mandatory application, both of those amendments are very well taken.

Legitimate self-defense exception also is one that I think would be of substantial importance to people who have used firearms in a way they thought was justifiable.

It is my impression from what we have done, and I want to commend our floor manager of the bill, the Senator from Massachusetts, because it is my understanding of what we have done, that we are assured by the amendments now offered by the Senator from Idaho and myself that the provisions of this bill do not change the existing law that concerns the use of firearms or explosives or in the general area of what we would call gun control law.

We were trying to make certain that this bill is one that does not disturb the

status quo as far as the existing laws pertaining to gun control that have been enacted by Congress are concerned.

I congratulate the Senator from Massachusetts for being willing to make certain that this is the case and that this bill maintains the provisions and interpretations of existing laws insofar as these amendments are concerned.

I thank my good friend from Idaho for having taken the time to present them on behalf of all of us.

Mr. McCLURE. I thank the Senator from Alaska for his remarks, and also thank him for being a cosponsor of these four amendments.

Mr. President, I ask unanimous consent that there may be a technical amendment made in the black powder amendment to conform the section reference to the structure of the existing bill.

The PRESIDING OFFICER. Does the Chair correctly understand that the Senator is proposing that amendment?

Mr. McCLURE. I am proposing that the staff be given the authority to make the technical change to conform the reference to the existing bill.

The PRESIDING OFFICER. Is there obejction? Without objection, it is so ordered. The Senator from Wyoming.

Mr. STEVENS. Mr. President, I move to reconsider the votes——

The PRESIDING OFFICER. The Senator from Wyoming has the floor.

Mr. WALLOP. Mr. President, I do not think we have voted on anything yet.

I thank my friend from Idaho for permitting me to be a sponsor of these amendments, and for the assistance and help we had from Senator KENNEDY'S staff last evening as we tried to prepare these proposed amendments. Basically, they constitute a recognition that there are two different sets of circumstances within this country, and that while one might well have serious qualms about certain events that might take place on a Federal reservation, there is a vast difference between, for instance, a Federal reservation in Washington and a Federal reservation in the State of Wyoming, and I think the amendments recognize that difference to a very fine degree.

The amendments offered today meet the concerns of many of my constituents in Wyoming and I am very pleased to join Mr. McCLURE as a cosponsor.

I would like to address two of these amendments in some detail, and join with the remarks of both Senators STEVENS and McCLURE on all of these amendments.

The first amendment being offered would clarify section 1822 of S. 1437, the section entitled "Firearms Offenses" by limiting the jurisdictional section to reflect current law. This section makes it unlawful to transport or possess a firearm or ammunition with the intent that it be used, or with the knowledge that it may be used to commit a Federal, State, or local felony. Under the present language, Federal jurisdiction over this offense could potentially extend to almost all intrastate firearms, ammunition, and black and smokeless powder transactions. Under this amendment, this extremely wide-sweeping jurisdictional base would be limited to those cases in which the firearm or ammunition has a connection with interstate or foreign commerce. I understand this new language reflects the intention of the draftsman at the Department of Justice. The amendment will prevent the undesirable result of creating a Federal felony out of conduct which may or may not be punishable under State law when there is only a tenuous nexus to interstate or foreign commerce.

The second amendment that I would like to address now would limit the extremely broad scope of section 1823, the offense entitled "Using a Weapon in the Course of a Crime." Briefly, this section would make it a Federal felony for any person to display, possess or use a firearm or other destructive device in the commission of a crime. Depending on the particular circumstances, the punishment for this offense is a mandatory minimum prison term without opportunity for early release. This amendment will remove from the reach of this section those misdemeanors which consist solely of damage to property and which do not endanger others.

Section 1823 causes some very real problems in my own State and any State which is comprised in part by Federal lands. Wyoming is an expansive State, but not all of our land is State land. In fact, the Federal Government owns a large percentage of the land within the State borders. Under section 1823, then, the Federal Government will have jurisdiction over all conduct which constitutes an offense as described by this code which occurs on Federal land within the State.

This could have very serious consequences for a person in Wyoming who engages in minor criminal activity on Federal land. For example, if this Wyoming resident intentionally shoots a rifle and damages a road sign while on Federal property, he has committed two crimes: the misdemeanor of "property destruction" and the felony of "using a weapon in the course of a crime." He can then be prosecuted not only for the misdemeanor, but also for a felony for which a mandatory minimum prison term must be imposed. Mr. President, I suggest that this works an injustice in the case of misdemeanor conduct where there is no risk of harm to others. If the lands had been State owned, this offense would only be punishable under State law. Now, because the State has lands within its borders which belong to the Federal Government, he is subject to prosecution by the Federal Government. To compound this problem, he can be sentenced far more harshly under Federal law than he probably would be under State law.

When a misdemeanor offense such as this is committed with a firearm on Federal lands and where there is no risk of danger to others, it seems unjust to prosecute the actor for a Federal felony where imprisonment is certain. This amendment answers that problem: Section 1823 will not apply in the case of minor misdemeanor offenses involving property damage where people are not endangered. Since there is no compelling reason to reach this kind of conduct, the jurisdiction of the Federal Government to prosecute should be so limited.

Again, I want to join my colleagues in their remarks on these four amendments and urge their adoption by the Senate.

The PRESIDING OFFICER. The question is on agreeing, en bloc, to the amendments of the Senator from Idaho.

The amendments were agreed to.

Mr. KENNEDY. I move to reconsider the vote by which the amendments were agreed to.

Mr. WALLOP. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GRIFFIN. Mr. President, I have an amendment. I do not call it up at the present time, but I ask unanimous consent that it be printed in the RECORD at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. GRIFFIN. Mr. President, one part of the very long and complex piece of legislation before us deals with the Bureau of Prisons and funding available for the construction of certain facilities to take care of Federal prisoners.

I have considered, very frankly, offering an amendment, which would be a version of a bill I have previously introduced, S. 1245, to establish a Federal program of assistance to State and local units of government for the construction, and acquisition, and rehabilitation of correction facilities.

It has been a concern of mine that Congress has not addressed in any meaningful way the desperate shortage of prison facilities in this country, and the inadequate—indeed, deplorable—condition of many of the facilities that do exist. In many areas of our country, the situation has reached crisis proportions. Judges are criticized for letting criminals go free on the streets; but they often have a justifiable excuse, which no one listens to—the judges have no place to put the criminals. This is a serious problem.

I have been concerned about the problem insofar as the handling of Federal prisoners in the Detroit area is concerned; and fortunately, with the cooperation of the administration, there has been a program established to build a detention facility for Federal prisoners in the Detroit area. But that only begins to scratch the surface of the problem.

The shortage of prison facilities is not only a national disgrace, but it ought to be a national concern for another reason: more and more Federal courts are now ruling that confinement of a prisoner in conditions that now exist in some State and local jails and prisons is a violation of the Constitution.

I think if we are going to have a Federal war on crime, it is essential that the Federal Government take a real look at this part of the problem. I have introduced this bill, which, as I have said, would establish a matching grant program under which the Federal Government would put up 75 percent of the

funds for the State or local jurisdiction would put up 25 percent of the funds for the construction, acquisition, or rehabilitation of prison facilities to meet modern day standards.

There are some in our society who have tried, in an organized way, and to some extent succeeded, to keep Congress and other legislative bodies from taking any action to provide additional prison facilities.

I want to point out that the bill that I have introduced, and which I would offer as an amendment, provides not only for the construction of facilities for the hardened criminal, but also for halfway houses, work release centers, and community based facilities for both adult and juvenile offenders.

It seems to me that the Federal Government should exert needed leadership in this field. Because the Senator from Massachusetts is not only the floor manager of this bill but chairman of the subcommittee, I wonder if he would be willing to respond to the suggestion that I offer my bill as an amendment to the pending bill.

EXHIBIT 1

On page 346, between lines 20 and 21, insert the following new Section, and renumber succeeding sections accordingly:

"§ 577. State and Local Corrections Construction and Program Development Policy

"(a) It is hereby declared by the Congress that

"(1) conditions in many State, county, and local prisons and jails are overcrowded to the point of reaching crisis proportions;

"(2) understaffed and overcrowded prison and jail facilities are unable to provide proper security and safety for both prisoners and staff;

"(3) existing rehabilitation, legal, recreation, medical, and other program services provided by prisons, jails, and other correctional institutions and facilities are inadequate to meet the needs of accused or convicted offenders;

"(4) State and local governments, in many instances, do not have the financial resources needed to respond to the increasing need of the correctional system for appropriate institutional and noninstitutional facilities and services for accused and convicted criminal offenders;

"(5) courts have found that the confinement of persons under conditions prevailing in some State, county, and local prisons constitutes a violation of the Fourteenth Amendment to the United States Constitution;

"(6) these conditions constitute a growing threat to the national welfare requiring immediate action by the Federal Government to assist State and local governments; and

"(7) the continued development of community-based correctional facilities and programs is essential to the development of an enlightened and progressive correctional system.

"(b) It is, therefore, the policy of Congress to provide additional resources to State and local governments for the construction, acquisition, and renovation of correctional institutions and facilities and for the development and improvement of correctional programs and practices within such institutions and facilities.

"(c) As used in this Act—

"(1) 'Construction' means the erection, acquisition, expansion, or repair (but not including minor remodeling or minor repairs) of new or existing buildings or other physical facilities, and the acquisition or installation of initial equipment therefor.

"(2) The term 'correctional institution or facility' means any place for the confinement or rehabilitation of juvenile offenders or individuals charged with or convicted of criminal offenses.

"(d) The Law Enforcement Assistance Administration (Administration) established under title I, section 101, of the Omnibus Crime Control and Safe Streets Act of 1968 (Crime Control Act) is authorized, pursuant to the terms of this Act, to award a supplemental grant to any State, through the State planning agency established pursuant to the Crime Control Act, that submits an approved application for funding under part E, section 452, of such Act.

"(e) Any State desiring to receive a supplemental grant under this Act for any fiscal year shall submit an application in such form and on such date as established by the administration. The application submitted must be consistent with the purpose of this Act, the State's approved application for part E Crime Control Act funding, and any additional terms and conditions established by the Administration consistent with the conditions for funding established in part E, section 453, of such Act.

"(f) At least 75 per centum of the funds allocated under this section to a State for any fiscal year must be used for the construction, acquisition, and renovation of correctional institutions and facilities, the balance to be used for the improvement of correctional programs and practices within such institutions and facilities.

"(g) The funds appropriated each fiscal year to make grants under this section shall be allocated by the Administration among the States according to such factors as their respective (i) general populations, (ii) prison populations, and (iii) costs of correctional construction, for supplemental grants to State planning agencies. Any grant of funds available under this section may be up to 75 per centum of the cost of the program or project for which such grant is made.

"(h) If the Administration determines, on the basis of information available to it during any fiscal year, that a portion of the funds allocated to a State for that fiscal year for supplemental grants to the State planning agency of the State will not be required by the State, or that the State will be unable to qualify to receive any portion of the funds under the requirements of this section, that portion shall be available for reallocation to participating States in the discretion of the Administration.

"(i) There are authorized to be appropriated for the purpose of carrying out this section not to exceed $150,000,000 for the fiscal year ending on September 30, 1978, and $350,000,000 for the fiscal year ending on September 30, 1979. Funds appropriated for any fiscal year may remain available until expended."

On page 346, in lieu of "§ 577" on line 21, insert "§ 578."

Mr. KENNEDY. Mr. President, I welcome the opportunity to explain to the Senator from Michigan my own strong concern about the failure of legislation dealing with the whole issue of prisons. I can tell the Senator from Michigan that this is probably as true in my own State of Massachusetts as it is in any State in this country.

Recently, we had a very impressive study done by a former mayor of the city of Boston, John Collins, who is a professor at MIT, to review the prison situation in the State of Massachusetts. This report made some very important recommendations in terms of the modernization, and expansion of our prisons.

Frankly, that message has largely gone unheeded in my own State. The deterioration of prisons in my State and in local communities within my State have reached critical proportions. In one jail in particular, the Charles Street jail, a Federal judge has declared it unfit.

I visited that jail about 8 or 9 months ago. It truly fits the judge's description.

I would think that one of the reasons we have not dealt with the issue of our jails is that too often in the past we have looked for the easy way out on crime. I believe this body has seen that time and time again.

I am hopeful that, with the bipartisan action we are taking with S. 1437, we are at last dealing in a responsible way with the issue of criminal justice. But S. 1437 does not deal with the area of jails and prisons.

I can assure the Senator that the next legislation on track in terms of the Criminal Laws Subcommittee is the LEAA legislation. I am considering a variety of different approaches in terms of that legislation.

As the Senator knows, we have probably spent about $7 billion or $8 billion over the last 10 or 11 years on LEAA.

There needs to be an extensive overview of that program.

I believe one of the prime areas of importance as we review the LEAA program will be the area of prisons and halfway houses along the lines referred to by the Senator from Michigan.

I want to give assurance to the Senator from Michigan that we would welcome his input as we fashion that legislation, which I am very hopeful will be considered and reported by the Judiciary Committee in the next few months.

I think there is a real opportunity to deal with the issue raised by the Senator. I will certainly work very closely with the Senator to begin to cope with the problem outlined by the Senator from Michigan. I do not believe we have done it in the past. We have not done it in the past with LEAA, nor are we doing it in this legislation. It was really not intended to be in this legislation, of course. But I do think there will be an important opportunity to begin the process with the revised LEAA bill. I welcome the opportunity to work with the Senator. I believe we can get some legislative progress in this area in this term of Congress.

The House of Representatives, as the Senator might know, has two items on their priority agenda, the LEAA legislation and this legislation. They are also moving. I know Attorney General Bell has talked to Chairman RODINO, as he has talked with members of our committee and Chairman EASTLAND, about the importance of revamping LEAA. I believe there will be an important opportunity for many of the suggestions of the Senator. I will certainly work closely with him to accommodate those suggestions with other views of the members of the committee. It is a serious problem.

I want to assure the Senator that despite the fact we have not dealt with the problem specifically this year, we do

recognize it, and we will accept all the help we can get concerning it.

Mr. GRIFFIN. Mr. President, I wish to thank the distinguished Senator from Massachusetts for his comments.

I would just like to add this: Along with many others, I believe that incarceration of criminals under proper conditions and circumstances is necessary for the protection of society and is a deterrent to crime.

Those of us who vote for various measures to make the laws tougher, for example, to require mandatory sentencing by judges, also have a responsibility, it seems to me, to see whether there are enough prisons to accommodate the criminals being sentenced.

Too often, legislators at both the Federal and the State levels who rush in the direction of toughening the laws do not look in the other direction to see what is happening to the human beings who are being convicted under the law.

While, I believe State and local governments have an important responsibility in this area, it is just as clear that crime is also a national problem. There are limited areas in which the Federal Government may properly become involved in the war against crime, and it seems to me that the financing of prison facilities is one of these.

I hesitated to introduce this bill, I might say, because I believe that—unless Federal action is forthcoming after the hope of it has been extended—held out—we may do more damage than good if State and local officials delay the construction of facilities while they wait, wait, and wait for the Federal Government to provide assistance. I would hope the committee will take this consideration into account.

I believe it would be well, if there is a consensus that a Federal role should be played, for us to reach some agreement and take action in the near future so that State and local officials will know what they can expect and what they can rely upon. We would not then be in a position, by even discussing such legislation, of having encouraged them to put off the effort which is so desperately needed.

I only add to what the Senator has said, that I hope the committee—in addition to considering provisions of the LEAA legislation—will actually look at the bill we have fashioned, which we have carefully worked out, and which we think is sound. I hope that the hearings will take that bill into consideration as amendments to the LEAA legislation are considered.

Mr. KENNEDY. Mr. President, I say to the Senator from Michigan that we are dealing with the substantive part of the criminal justice system in terms of the law with this legislation—both the codification and the sentencing. We have not dealt with the administration of it, which is basically the LEAA.

The total expenditures in terms of law enforcement are still only about 8 or 9 percent of the dollar that is expended by the Federal Government, but it can be important leverage money. It can also be important in terms of trying at least to focus on the areas of important need.

Doing one without the other is, basically, doing less than even a halfway job on it. That is the approach of those of us who took an interest in the partial revision of the LEAA last year, and we recognize the importance of a total review of it this year, those of us who support this particular program.

I certainly agree that there is an appropriate role for the LEAA in the type of program that the Senator from Michigan has outlined. The extent of it and the balancing of that in terms of other factors is, obviously, going to be a judgmental kind of question, but I think it is one that should be included. It is one that should be worked on. I want to reiterate my own interest and desire to work with the Senator as we come to grips with this issue. We have an appropriate legislative vehicle, I think, to move us in an important way along the lines that the Senator from Michigan has outlined. I am hopeful that we can do it in this Congress.

Mr. GRIFFIN. Mr. President, I have not offered an amendment, so it is not necessary to withdraw it, although it will be printed in the RECORD. I should like my colleagues and others to take a careful look at it. I hope and trust that, as a result of this colloquy, we can make some progress in this area.

I want to indicate to the distinguished floor manager that I shall certainly be available to do everything I can to help. I thank the Senator very much.

Mr. KENNEDY. I thank the Senator.

UP AMENDMENT NO. 1142

Mr. ALLEN. Mr. President. I send an amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. Without objection, the amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN) proposes an unprinted amendment numbered 1142.

On page 166, line 2, insert "and in relation to" after the term "during".

Mr. ALLEN. Mr. President, this amendment has been discussed with the managers of the bill. It has to do with the section making it an offense to carry a firearm in the commission of a crime. By previous amendment, the bill has been amended to provide that this has to be a crime of violence, where a firearm is in possession during the commission of a crime of violence. This amendment would add the further stipulation that the firearm must be possessed in connection with the commission of the crime of violence.

The law now speaks of carrying a firearm and the amendment changes it to possession, because, many times, they might not be carrying it on their person or holding it in their hand; but if it is in their possession. that would be an offense. But if it were in the back seat of a car or some other place, and not actually being used in the commission of the crime, that should not be held to be in possession of the person. This amendment merely requires that the possession of the firearm be related to the commission of the crime. I believe that it is satisfactory with the manager of the bill. At any rate, I offer it.

Mr. KENNEDY. Mr. President, this seems to be acceptable to the committee. I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. ALLEN. I suggest the absence of a quorum, Mr. President.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EDITORIALS RECOGNIZE THE COMPLEXITY OF THE WATERWAY USE TAX ISSUE

Mr. ALLEN. Mr. President, one of the most complex and complicated issues ever to come before the U.S. Congress involves waterway user charges.

The controversy over whether there should be user charges—and, if so, how much—basically revolves around the question of who primarily benefits from the Federal investment in inland navigation programs: the bargelines or the public generally.

In view of the relationship of water transportation to certain pressing national policy objectives, the public benefits of inland water transportation are now more salient than ever before.

Because agricultural and energy products comprise almost three-fourths of all inland waterway commerce, there are farm policy and energy policy considerations involved.

Since increased transportation costs will be passed on to consumers in the form of higher gasoline tax, electricity, and other costs, the inflationary impact must also be considered.

Higher river barge rates will undoubtedly affect, in addition, industrial growth, employment opportunities and the overall economies of interior river valleys as well as general competitive relationships and the volume of both exports and imports.

Newspaper editors throughout the country are concerned about these national issues, and many of those who have delved into the impact of inland waterway user charges or use taxes have discovered that the proposition is not as simple as it may seem.

In fact, I am afraid that some editorial writers who have endorsed cost-recovery levels of taxation may have oversimplified or ignored the impact. Other newspapers have endorsed H.R. 8309, the 4-to-6-cents-a-gallon waterway fuel tax passed by the other body in October, as a cautious method of making the waterway users "pay something."

In my home State, neither the Mobile Press nor the Mobile Register have had any kind words to say about cost-recovery user charges—or, for that matter, any waterway user charges at all. The newspapers are rightly concerned about the prospective impact of such charges

on the port city of Mobile, terminus of the Coosa-Alabama and Warrior-Tombigbee Waterways, linking Mobile with Montgomery, Selma, Tuscaloosa, and Birmingham.

Several other newspapers—including the New York Journal of Commerce, the Chattanooga Tenn., News-Free-Press, the Memphis Commercial Appeal, the Nashville Banner, the St. Louis Post-Dispatch, the Alton Ill., Telegraph, Traffic World, and the Huntington, W. Va., Herald-Dispatch—have run editorials on the subject of waterway user charge legislation, which illustrates the controversy it has stirred up.

These editorials have sought to put the user charge issue—and the question of replacing locks and dam 26 on the Mississippi River, which first brought user charges to the fore—into a perspective that I think will be informative and of benefit to my colleagues in considering user charge legislation.

For that reason, I ask unanimous consent that these editorials be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Mobile (Ala.) Press-Register Oct. 27, 1977]

CONGRESS WORKING TO PUT ANOTHER TAX ON CONSUMER

Early in the nation's history, the government adopted a policy of "forever free" waterways. We see no reason to abandon this guarantee of toll-free and tax-free inland waterways.

Unfortunately for both industry and consumer, Congress does.

Congress is considering two pieces of user tax legislation on inland waterways. One of those, proposed by Sen. Pete Domenici (R-N.M.), would implement the equivalent of the 42-cents-per-gallon fuel tax sought by the Department of Transportation. The second bill (H.R. 8309), recently passed by the House, calls for a four-cents-per-gallon tax in 1979 with an increase to six cents in 1981.

While the Domenici bill is more punishing than the House version, both flaunt a tradition that encouraged building, use and maintenance of inland waterways.

No study has been made on how much either bill would affect the cost of shipping on the Tennessee-Tombigbee Waterway, scheduled for completion in 1986. But the Domenici proposal would cost Pittsburgh area industry and consumers a minimum of $29 million annually, according to a study by the Pittsburgh Chamber of Commerce and the University of Pittsburgh.

The results of the study have made some Pittsburgh area residents livid. They claim their economy is already suffering heavily because of below-market-price foreign steel infiltration.

Justin Horan, president of the Pittsburgh Chamber, declared that under the Senate version of the tax, revenues generated by Pittsburgh would be 100 per cent greater than the amount spent to maintain and operate that district's system.

We are hoping, of course, that both bills in Congress will be junked, particularly the Senate bill.

Striking down a longtime policy and tradition on inland waterways for the sake of added taxes brings our cool to a boil. This is just another way, we believe, of cracking the hard-pressed consumer between the eyes.

[From the Mobile (Ala.) Register, Nov. 24, 1977]

RAILWAY USER CHARGE URGED

Legislation to levy a tax on fuel used by inland waterway commerce, starting at 4 cents a gallon and increasing to 6 cents a gallon, passed the U.S. House last month, and is scheduled for Senate debate in January. At that time, an amendment is expected to be offered to require cost-recovery waterway user charges—or the equivalent of 42 cents fuel tax.

All of this brings our cool to a boil.

Inland waterways have been toll-free for some 200 years and, in our studied opinion, should remain that way.

The only bright spot is that enactment of waterway user charge legislation may lead to imposition of railway user charges.

It would surely be unfair to put a new tax on inland waterways, which have received little federal largess compared to railroads, without imposing the same sort of tax on the railroads.

"Why shouldn't railroad companies have to pay user charges, too?" asks Harry N. Cook, executive vice president of the National Waterways Conference. "In view of the fact that railroads are the recipients of continuing and extensive federal aid, it would seem only fair to impose railway user charges in the interest of a neutral national transportation policy."

In discussing the waterway user charge issue, Cook correctly noted the barge and towing industry was "victim of an image created for it by its adversaries."

There is no reason we know of why the barge and towing industry shouldn't urge Congress to place any user charges on railroads that it sees fit to put on the barge and towing industry.

[From the Journal of Commerce, Sept. 20, 1977]

THE PRICE OF DAM 26

It now seems highly likely that waterways operators will have to begin paying users charges two years hence to defray some of the costs incurred by the Corps of Engineers in maintaining and improving inland navigation systems.

Although they have long fought successfully against efforts to impose such charges, those involved in for-hire transportation (represented largely by the Water Transportation Association) appear to have recognized the difficulty of persuading Congress to fund any more important navigation projects along the inland rivers unless they accept what they so long rejected.

The urgent need for new locks at a particular bottleneck on the Mississippi, a facility at Alton, Ill., doubtless spurred their willingness to accept a compromise. Some members of Congress have said they will not vote for the Alton project, which also includes a dam, and President Carter has indicated he won't sign a bill funding it unless it contains some user charge provision. The railroads have been insisting on the charge for many years and have found a staunch ally in the Department of Transportation. In the face of such formidable pressure from the White House, Capitol Hill, DOT and their principal competitors, the waterways operators had little option but to retreat or face defeat.

What waterways operators have agreed to accept is a fuel tax of four cents per gallon on commercial traffic using 26 inland water routes beginning Oct. 1, 1979. This tax rate, about equal to other federal taxes on fuel used in transportation, would increase to six cents a gallon four years hence. It is, naturally enough, more than WTA members want to pay, but considerably less than the railroads think they should pay.

Barge lines will probably have to raise their rates if the bill (HR 8309) passes the House and Senate. This will be good news to the railroads long vexed by waterway competition, though not to industrial consumers of the bulk commodities traditionally moved by barge. As it stands, the bill wouldn't greatly upset the existing relationships between rail and barge rates on bulk commodities. The real question is how long it will be allowed to stand in its present form.

After 1981 that will depend on the pressure that can be brought to bear on Capitol Hill by the railroads, on one hand, and, on the other, by the waterways operators and the industries depending upon the waterways for their raw materials. For the former, disappointed as they may be in the initial tax rates specified in HR 8309, the most important thing is that its enactment would provide a hole in which a powerful lever could be inserted.

This is doubtless recognized by such waterways spokesmen as John A. Creedy, president of the WTA, and J. W. Hershey, president of American Commercial Lines, both of whom endorsed the compromise in addresses before the National Waterways Conference in Kansas City last week. Both know that the price of the locks and Dam 26 at Alton will be the establishment of a precedent that may cause them much trouble in the future.

The precedent, as noted above, involves the concept that commercial users of waterways should bear a share of the cost of maintaining and improving waterways that serve a number of different purposes, not all commercial, such as flood control, recreation and the like. How much of that share should they, and their industrial shippers, be required to bear?

Our guess would be that they will be bearing a fair share of it if HR 8309 is enacted and signed by the President in its present form. What bothers us is the question of what will happen on Capitol Hill after the four cents per gallon tax is raised to six cents in 1981. Will the new fuel taxes (or user taxes) be held to these rather moderate levels for long? Or will the big lever be employed to pry them up to much higher levels? These are questions the shippers will have to bear in mind.

We recognize, as do all parties having a direct interest in HR 8309, that it is more difficult to get Congress to establish a precedent than it is to expand on that precedent, once established. A case in point is the Social Security System, which started modestly as an actuarily-based retirement program managed by the government, but which has been vastly expanded in terms of rates, benefits and coverage for the better part of 40 years.

Another is the minimum wage law. Under the relentless pressure of the labor unions the minimum has been forced upward, step by step, for many years and is apparently to be levered up once again to $2.65 an hour, regardless of indications that one consequence of this will be to close off employment possibilities to teen-agers and unskilled minority workers.

Once the concept of special taxes on users of inland waterways gets on the statute books, it will be relatively easy for Congress to vote increases in the tax rates; much easier than getting the precedent established. So if the barge lines and their customers are a bit uneasy over the price they are paying for Dam 26 and the new locks at Alton, we think they have reason to be. Once Congress gets accustomed to the idea that it can legislate barge rates up to almost any levels, it is any man's guess what it will do.

[From the Nashville (Tenn.) Banner, Sept. 17, 1977]

TAX WATERWAYS DOWN THE RIVER?

(By Paul Greenberg)

America's railroads seem determined to protect the public from all depredations except their own.

The latest free rider spotted by the sharp-eyed railroad lobby is the country's recently improved system of water transportation. Here the government has gone and spent all this public money on the Nation's inland waterways while collecting scarcely any tolls or taxes from the barge companies.

A tax on waterway users, now proceeding through Congress at full speed, would seem to be only fair.

Seem to be is right. Because guess who will foot the bill for this tax. The consuming public. First, in the form of higher rates for water transportation. Taxes do have a way of being passed on. Higher water rates would also allow higher freight rates in general. Rail rates to the Arkansas area dropped dramatically when the Arkansas River navigation system was completed. They could be expected to rise in proportion to any tax on waterway users.

In the past, the railroads have complained that competitive pressures from the waterways "depress" their earnings by some $500 million a year. That should give the public some idea of what the railroads stand to collect as taxes wipe out the differential between rail and water freight rates. Not only the government but the railroads would collect from a new tax on waterway users. That may explain the railroad lobby's sudden interest in equity.

The idea that waterway users are getting a free ride may be fairly convincing if you're not in the business of water transportation. That is, if you don't have to build the docks, contract for the terminals, construct warehouses and elevators, arrange for the special cargo-handling equipment needed on occasion, put in water lines, pay for streets, sewers and frost protection, and consider the cost of railway spurs and highway connections at ports. A lot of money is required to take advantage of this "free" ride.

Harry Cook of the National Waterways Conference estimates that private investment equals 20 to 40 per cent of the improvements made to inland waterways by the federal government. According to his figures, private investment far outstrips the total $5 billion the federal government has spent on waterways since 1824, when it began to get into the business at the behest of Henry Clay. Since 1952, more than $171 billion in private investment has been responsible for some 10,000 new or considerably enlarged plants along the waterways.

It's not as though the waterways were the only beneficiary of government subsidies to transportation, or the biggest. The cumulative investment of the federal government in inland waterways over the years is less than the single $6.4 billion Rail Revitalization and Reform Act. The railroads also have the historic distinction of being the recipients of the largest government grant ever recorded: Land grants encompassing 9.4 per cent of the continental United States as the railroads expanded in the late 19th Century, also known as the Age of the Robber Barons.

Some waterway users are willing to accept a less onerous form of this tax tied to funds for an improved lock and dam near St. Louis. Other users oppose any new tax or toll on the users of the public waterways. The divisions among waterway users over this tax may not indicate a solid front or a very cohesive lobby in Washington. But those divisions do reflect the fierce competition in water transportation, which remains one field in which the conglomerates have not neatly divided the business. It is difficult to see how imposing tolls in this industry would encourage new investment—and therefore competition—either on the waterways or with other forms of transportation.

Perhaps the most dubious aspect of this new waterway tax is its timing. In the midst of an energy crisis, it would penalize a most efficient form of transportation. It's estimated that inland waterways move 16 per cent of America's cross-country freight at a cost of less than 2 per cent of the Nation's total freight bill. Water transportation seldom has been so important to the national interest. And now Washington is proceeding to slap a tax on it.

There is apparently no crisis that Capitol Hill, with some additional thought, initiative and taxes, cannot make worse.

[From Traffic World, Sept. 26, 1977]

A MOMENTOUS TRANSPORT DEVELOPMENT

The soul-searching that J. W. Hershey, president of the National Waterways Conference and chairman of American Commercial Lines, said he had done as he announced support by the conference for imposition of a low-level fuel tax on the barge and towing vessel industry (T.W., Sept. 19, p. 19) was done intelligently and wisely, as would be expected of a successful business leader.

It may have been a difficult decision for an organization of waterways operators to make, but certainly it was sensible. It was impelled in no small degree by a realization that inevitably some sort of waterway user charge legislation would be enacted in the near future. The NWC leaders probably could see a possibility, too, that continued resistance to any kind of waterway user charge would do more harm than good for the industry. The NWC members had reason to be fearful of action by Congress that might make it difficult for them to stay in business—action such as the Senate took last June in passing and sending to the House a bill embodying a "cost-recovery" concept as a basis for determining the level of taxes to be imposed on the water carriers. It has been stated that under this concept the fuel tax on the barge and towboat operators could be as high as 43 cents a gallon. This could be an instance of the use of the power to tax as a means of destruction—destruction of the inland waterway transportation industry, in this case.

"I am certain," Mr. Hershey told the NWC members in their meeting in Kansas City, Mo., "that crippling and ultimately destroying the inland waterway transportation system was an unintended objective of the bill that came out of the Senate. . . ."

The bill that the NWC is now supporting—and for which it is soliciting support—is an amended version of H.R. 8309, introduced on July 14 by Representative Harold T. Johnson (D-Calif.), for himself and Representatives William H. Harsha (R-O), Ray Roberts (D-Tex., and Don H. Clausen (R-Calif.). As introduced, it was titled "a bill authorizing public works on rivers for navigation, and for other purposes." As amended by the House Ways and Means Committee, before being favorably reported by that group on July 25 (T.W., Aug. 1, p. 27), the bill contains provisions under which a four-cents-per-gallon tax on fuel used by the barge and towing industry would become effective October 1, 1979. The tax would be increased to six cents per gallon in 1981.

The annual costs that the Senate-approved bill is designed to recover include most of the annual federal expenditures for operation, maintenance and construction of inland navigation facilities.

Though he contended, in testimony before the House Ways and Means Committee last July, that there was no justification for a tax on the waterways operators, Mr. Hershey argued that "if a tax is imposed, let there be no long-term commitment to increasing it before factual answers are available on its impact."

He asserted that "a commitment now to such an impossible goal as full cost recovery—a goal out of line with the general 'no recovery' policy of the Congress on investments whose benefits permeate the entire economy, and particularly for other water resource projects such as irrigation and water supply—is both unnecessary and highly risky."

"That," he added, "is the position of the (National Waterways) Conference today. We are fighting cost recovery, not a low-level tax."

Possibly a "cost recovery formula" under which the fuel taxes imposed on the waterway carriers would be eminently fair, reasonable and nondiscriminatory could be developed—but we would have serious doubts about the chances for working out a fuel tax formula of that sort that could survive attacks in the federal courts.

We note, with interest, the observations made by Mr. Hershey in his discussion, in his annual report, of "An Opportunity for Public Benefit Recognition."

Referring to a provision of H.R. 8309 as amended and reported by the House Ways and Means Committee, calling for a three-year study of the impacts from fuel tax imposition—the study to be made by the Secretaries of Transportation and Commerce in consultation with the Secretaries of the Treasury, Agriculture, Energy and the Army—Mr. Hershey said that the House committee thereby had recognized "the risk in committing the Congress to cost-recovery tax levels" and that this is "a challenge that offers opportunities."

"The study," he continued, "is to include, but will not be limited to, economic impacts on carriers and shippers using the inland waterways; on the public as users, including the ultimate consumers, of products which are transported on the inland waterways; and on the balance of payments of the United States based on international trade. The study is to include pricing and diversion effects on competition for freight, effects on the cost of energy, and effects on regional development.

"In other words, at long last the opportunity arises for achieving some semblance of a mathematically precise public and governmental recognition of the widespread, interrelated and indispensable public benefits derived at various levels from the federal investment in the inland waterways."

Whether the proposed fuel tax levels—4 cents and, later, 6 cents per gallon of diesel fuel—are sufficiently high may be debatable, but the willingness of the barge and towboat operators to accept them means some degree of satisfaction for those who for many years have argued soundly that escape from user charges by inland water carriers is unfair to other modes against which federal excise taxes are levied. Unless and until the part of waterway project costs properly assignable to navigation beneficiaries can be determined, the "cost recovery" scheme, providing for no separation of such costs from those of improvement for flood control, irrigation or recreational benefit, seems unacceptable. The fuel tax, unless carried to indefensible extremes, seems to us to be fair to the waterway carriers and taxpayers alike.

[From the Waterways Journal, Jan. 21, 1978]

ZERO HOUR NEAR

Washington lawmakers are approaching the zero hour when they will resume consideration of user fee proposals and Locks and Dam 26 replacement.

Not to be separated from this ongoing drama is the recent Senate committee recommendation to end the U.S. Engineers' traditional role in building dams, locks and canals, and in the dredging of harbors and channels. Those water resources development responsibilities of the Corps along with some others, would be transferred to the U.S. Department of Transportation.

Strongly tied into the issues, is the in-

fluence of the railroads and their much publicized charge—myth though it is—that competition from the barge lines is the root cause of all their problems. It never has been.

The Senate Governmental Affairs Committee, in a new, 357-page report, says that the locks and dam proposal shows how the Corps pursues its responsibilities for building and operating the country's inland waterways without considering the impacts on competing modes of transportation, particularly the railroads.

The senators also said that the Engineers' handling of the Mississippi River dam project is an example of the need for reorganizing federal transportation agencies and stripping the Corps of its role.

It may very well be that this nation needs a unified national transportation policy. And it may be that such action as that being recommended by the Senate would, in the opinion of that body, be a step in the right direction. But we said last week, and we repeat today, that in the light of the DOT's performance in recent years as it relates to the future of the inland waterways and the barge and towing industry, it would be a fatal move.

We have never questioned America's need for a viable system of railroads. Pushed into the ultimate corner where it becomes a matter of "either/or," doubtless there are those who would conclude the railroads are more important. Fortunately we are not faced with that dilemma.

We would like to remind our readers that the current plight of the railroads is a product of mismanagement. It is also a by-product of overregulation by a government that has all but destroyed many benefits of the free enterprise system by not allowing it to function normally. It is the "survival of the fittest" characteristic that would have assured strong railroad systems over the years. Unable to stem increasing governmental regulation, the railroads have turned to another approach, that of attacking the barge and towing industry as its arch enemy. They also attack other transport modes.

To the contrary, elimination of barge lines would hurt both railroad and trucking industries, not to mention the businesses that depend upon low-cost water transportation to move the cargoes to keep them operating. Worse, it would be devastating to the economy in general.

When it was revealed in May, 1977, that the Administration planned to propose user fees, it was Transportation Secretary Brock Adams who said a 1,200-foot lock would sooner or later be built at Alton, Ill., "especially because it wouldn't cause significant diversions of freight traffic from railroads." Now, the Senate report derides the Corps because it says the agency has not considered impact on railroads.

It was 10 members of the Senate who, in a letter to Mr. Adams, criticized DOT's report on Locks 26. The DOT tried to support its conclusions with tonnage figures from 1973 and ignored years of record-keeping by the Corps that indicated steady growth. The DOT overestimated shallow draft tonnage threefold.

In recent days DOT spokesmen have expressed the opinion that some railroads may not survive the reorganization necessary to secure a viable railroad network for America. Bravo! The light begins to dawn.

All over America supermarkets fail because the areas in which they operate become saturated. All over America business endeavors of various kinds fall victim to that "survival of the fittest" characteristics that ensures health and continued well-being to those that are operated properly.

It has become increasingly clear over the years that the fate of the barge and towing industry depends entirely upon the convictions of railroad officials and upon those who buy the story that barges and towboats represent the enemy.

It is essential that reason be restored to the deliberations. While the continued survival of the railroad industry is of utmost importance, the weak and mismanaged lines can be allowed to fail or be bought up by stronger lines just as weak and mismanaged barge lines are allowed to fail or be bought up. And there are other considerations.

It was the federal government that established the old Federal Barge Line to counter railroad transport monopolies.

River valley railroads, during the period from 1960–71, experienced a rise in freight carriage of 53.2 per cent, nearly double that of all other Class I railroads.

A Congressional Budget Office study predicts that if the Senate's user fee proposal is passed, it would eliminate 96 per cent of the freight traffic on the Arkansas Waterway. That system is operating in the black much earlier than predicted and private investment there has surpassed that of federal investment.

The demise of the barge lines would result in unacceptable losses to other transport modes and the ultimate end to many businesses, not only those at riverside.

Many cargoes are much too large to be transported by rail. Nuclear reactors, power plant fixtures, offshore oil rigs, to name only a few.

Many cargoes, some hazardous, by their very nature and the vast amounts that must be moved, are not suitable for movement via rail. To bring about the ruination of the barge and towing industry with unreasonable user fees and continued other infringements on the inland waterways, would be to drop the entire burden upon a railroad industry that is decades behind in facility maintenance and a railroad industry many officials feel will be unable to keep up with the increased coal movements expected to be required in coming years.

The inland waterways do play a role in defense, as those who remember World War II can attest.

Finally, it is well to remember that the performance of the railroads, many of them at least, does not justify a willingness to stake the entire future of our country upon them. Federal records document well the failure of some railroads to meet loan requirements, update systems as stipulated when rate hikes are allowed, etc.

It is also interesting to note that the Association of American Railroads reported on January 6 that freight traffic on U.S. railroads totaled an estimated 816 billion tonmiles, 2.7 per cent above the 794 billion tonmiles reported in 1976. The association said the 1977 traffic represents the third best year in railroad history.

Yes, zero hour is near. And what Congress does in the matter of Locks and Dam 26 and user fees will have a great impact on the future of this country.

Reasonable user fees in the form of fuel taxes and a study, as proposed in H.R. 8309, is more sensible than the Senate bill approach. A nation that has lived centuries without fees surely can allow several years of study to determine what the results might be.

We might also remind our readers that the railroads, strong supporters of high user fees on the waterways, long ago announced that appropriate fees would make possible rail increases as high as $500 million annually. That will be but one of the results of user fees.

As for Locks 26, like a worn out car, an undersized sewage treatment plant, and a narrow, badly deteriorating highway, the facility needs to be expanded via replacement. Expansion costs little more than replacement with facilities of equal size. Delay increases the cost by 10 per cent annually.

Gentlemen of Congress, it's up to you.

[From The St. Louis (Mo.) Post-Dispatch, Oct. 21, 1977]

How High the Fees?

President Carter has dropped a bombshell of sorts into the controversy over legislation that for the first time would extract fees from commercial users of the nation's inland waterways. The user-fee principle is riding piggyback, so to speak, aboard separate House and Senate measures paving the way for replacement of Locks and Dam 26 on the Mississippi at Alton with a new dam and a longer, single 1200-foot lock some two miles downstream at a cost of about $432,000,000.

Not content with establishing the user principle, the President is now demanding under threat of a veto that Congress adopt a fee schedule so high that the barge operators fear it would put them out of business and adversely affect the economy. The House earlier provided for a precedent-setting fuel tax of 4 cents a gallon beginning in 1979 and rising to 6 cents in 1981. The Senate, however, would phase in far larger fees over a 10-year period so as to recover all of the operation and maintenance costs and 80 per cent of the construction costs on the inland waterways; this would bring in perhaps 10 times as much as the House measure. The Administration, through Transportation Secretary Adams in a letter to Senator Danforth, now says the President will sign no bill that fails to provide "charges that will recover a substantial portion of the operating and maintenance and new construction costs;" in other words, something pretty close to the Senate's prescription.

That is awfully stiff, particularly given the fact that fees of any size reverse a public policy set in the Northwest Ordinance of 1787 promising that the inland waters should be "forever free, without any tax, impost or duty." There may well be a case in this day and age to require that users carry part or all of the burden of building and maintaining the waterway apparatus. But a prudent Administration surely would want to begin with the House's lower fee schedule to observe its effect on the economy of the river and whether higher barge rates will mean higher rail rates on routes paralleling the rivers. Higher rail rates would do nothing to help pay for the cost of the waterway system.

[From the Chattanooga (Tenn.) News-Free Press, Aug. 14, 1977]

A Difficult Tax Issue

From the earliest days of our nation, our rivers and other waterways have been important to the development of our country.

In fact, frontiersmen settling in the Chattanooga and other Tennessee areas came in large numbers by boat. Our city began as Ross's Landing, a river trading post. Steamboats were early means of heavy transport and passenger travel.

Over the years, river transportation here and elsewhere in our country has seemed to be overshadowed by the age of the jet plane, the big tractor-trailer truck, the train, the bus and the automobile. But river traffic is still of very great importance to the country and to Chattanooga.

From the earliest days, it has been Federal policy to maintain navigation, dredging and improving channels and maintaining navigational markers. Other levels of government and private enterprise have provided other facilities for river service. This has been a reasonable system, since the waterways frequently involve interstate interests.

There is a current political issue involving the question of whether the users of the waterways ought to be taxed in some way to pay for the Federal expenditures for navigational systems.

It might be interjected that companies, of course, do not really pay taxes but only become collectors of taxes. Whatever they may be taxed must be passed on to consumers in the prices they pay. So if there is no user tax, we taxpayers finance the waterways through general taxation. If there is a specific user tax, then we will pay for the waterways in the prices of products that use the waterway system.

The waterway users would like very much for things to be "left as they are," with no direct tax on them for use of the waterways. They point to airlines and the use of public highways by trucks, though they are taxed.

They say it has never been calculated what part of federal expenditures for waterways might fairly be charged against barge use. And they say that under the heaviest tax proposal currently being offered, it might cost from 22 per cent more to ship wheat to 63 per cent more for soybeans to 76 per cent more for hot rolled steel coils.

All of this, of course, could affect Chattanooga and other waterway cities. It might have increased effect here as the Tennessee-Tombigbee Waterway is completed and cuts hundreds of miles off the present water route between Chattanooga and the Gulf of Mexico.

The two major waterway-user tax proposals before Congress are identified as HR 8309, that came out of the House Committee on Public Works and Transportation and the Committee on Ways and Means, and a Senate measure sponsored by Sen. Pete Domenici, R-N. Mex. They are quite different in impact.

HR 8309 calls for new Mississippi River locks and dam, an analysis of the economic effects of a waterways user tax—and a 4-cent-a-gallon tax on fuel on towboats operating on certain inland waterways, beginning Oct. 1, 1979, with the levy rising to six cents after two years.

If Sen. Domenici's plan of 100 per cent recovery of operation and maintenance costs for waterways and 50 per cent of new construction were imposed, the cost to waterway users would be much higher, with much higher costs to be passed along to consumers using waterway shipping.

Obviously, faced with a choice between the two plans, the American Waterways Operators, Inc. prefers the plan of HR 8309.

It is possible to make a good case for some tax on waterway users. There are also good arguments against one. The matter is quite complicated and its ramifications are so broad the layman is in poor position to make an informed judgment. Obviously, so far as economic impact on users of the waterways are concerned, the smaller levy of HR 8309 would be preferable to the heavier one of Sen. Domenici's bill.

Surely, much careful study should precede any action, and we should be careful to seek to avoid a decision that would have an adverse impact on the importance of our national waterways as a vital part of our economy.

[From the Memphis (Tenn.) Commercial Appeal, July 9, 1977]

FAIR FEES ON WATER

Life on the Mississippi nowadays has a heavy commercial beat to it as barges ply the inland artery delivering bulk goods to and from the nation's heartland with efficiency. The health of Memphis and the Mid-South depends in part on the well-being of the waterways system and the industries that use it.

But since federal programs to develop inland water transportation began in 1824, the commercial users have been getting a free ride. They have had their rights-of-way built and maintained by a 100 per cent federal subsidy.

As with every modern president since Franklin D. Roosevelt, President Carter wants to stop this free ride by imposing a system of waterway user fees. But unlike his predecessors, Carter has found the sweetener to make these fees more palatable. He has vowed to veto next years' waterway appropriations, including funds to rebuild Locks and Dam 26 on the Upper Mississippi, unless the legislation includes a fees provision.

In a classic political tradeoff, the Senate voted 71–20 to give the commercial barge industry Locks and Dam 26, where river traffic has bottlenecked for years, while ordering the waterway industry to help pay for future federal navigation aids on shallow-draft inland channels.

The Senate version of the appropriations bill calls for user charges to recover 100 per cent of federal operation and maintenance costs and 50 per cent of capital costs. The former will be phased in between 1979 and 1984 with the latter phased in from 1985 through 1989, according to the version passed under the sponsorship of Sen. Pete Domenici (D-N.M.).

At first, the waterways industry estimated this would lead to a 10 per cent diversion of freight to the railroads, which have long maintained the subsidies give the barge lines an unfair competitive advantage in setting rates. But Domenici agreed to include a fee limit of not more than 1 per cent of the total value of a commodity shipment. This makes potential diversion of traffic even more complex, and not even students of the proposal are prepared to speculate about its effect.

The Senate bill also gives the secretary of transportation until Jan. 1, 1979, to devise a rate schedule after public comment and a hearing. The schedule may use licensing fees, congestion charges, ton-mile charges, lockage fees, capacity fees "or any other equitable system or combination thereof." Congress would then have 60 days to study the secretary's recommendations, which also must take care that no river segment is closed and no one commodity unduly hurt by the charges.

The fees are supposed to make up for inequities in federal subsidy programs to the various transportation modes. While it is true that the commercial waterway users have received fewer total federal dollars than other forms of transportation, the federal subsidy directly attributable to the commercial waterways industry in fiscal 1976 was equal to 41 per cent of that industry's revenues, according to a Congressional Budget Office report. The railroads' subsidy was 3 per cent of 1976 revenues. Commercial airlines got a 1 per cent subsidy, while pipelines none at all.

Spokesmen for the waterway industry say they are not opposed to user fees per se but to the current legislation, which they contend is unfair since no one knows the true impact of federal subsidies on an industry-by-industry basis. One said that—if he had to choose—he would have preferred the amendment proposed by Sen. Adlai E. Stevenson III (D-Ill.). It called for an 18-month study in advance of the fee schedule while the Domenici version would require a subsidies study concurrent with the fees' development.

This point has merit. It is uncertain whether the current legislation would provide a more equitable subsidy program. And the Senate version also would allow little flexibility in helping regional economies that benefit from federal waterway projects along with the barge lines. The Lower Mississippi and Memphis probably would not suffer under user fees as much as the area surrounding Pittsburgh, where the heavy-metals industry is in a price war with foreign iron and steel. Higher transportation costs due to a user fee could seriously hurt that region.

The Tennessee-Tombigbee Waterway was designed to bolster economic development of Alabama and Mississippi, and that region, too, would suffer. Because that waterway is scheduled for completion in 1986, its users would be liable for a smaller construction payback than users of waterways that aren't as far along in the building. And many of these projects, especially in the West, are contemplated to fight regional drouth rather than to aid navigation. Is it or isn't it fair for the federal government to recoup 50 per cent of the capital costs and 100 per cent of the operations and maintenance costs from those who use the waterways for transportation? Nobody knows for sure.

In addition to the equity argument, there is efficiency. For years the waterway users have contended that barge transit is the most fuel-efficient way to move freight on a ton-mile basis. Studies commissioned by the industry as well as by the government have borne this out, but in the new concern about energy conservation, policy-makers are going beyond the limitations of the ton-mile measurements in looking at subsidies programs.

Rivers meander. So do railroad tracks and pipelines, but by 20 per cent less. Currents vary from stream to stream, trackbeds change the steepness of their grades, and pipelines go uphill as well as down. The laws of physics as well as possible detours along the route create many fuel-efficiency variables that don't show up in a ton-mile measurement.

And then, there is the matter of the fuel that's used to truck freight—grain, coal, petroleum, sand and gravel, or metals—from the producer to the dock, railhead or pipeline mouth. This also must be figured on the delivery end.

The problem is that all these variables make it impossible to give a blanket statement about fuel efficiencies when comparing these three relatively fuel-efficient transportation modes. But it's clear all three use less fuel than air or truck transit.

For this reason, the 1977 Congressional Budget Office report on waterway fees made the same recommendations as a 1975 Department of Transportation report on fuel efficiencies. That recommendation: Fuel efficiencies are subject to too many variables to be a precise tool in determining federal policies subsidizing transportation systems.

The waterways supporters say that the railroads are backing waterway user fees only so that they can raise their own rates. The barge lines and tow companies contend they need fewer people to operate and have more head-on competition than the railroads, which often enjoy a monopoly in an area because of the high cost of laying track, much less parallel track. This is one way in which the water transportation industry has been able to provide lower fees to shippers, but it is by no means the only way.

Another argument used to justify continued free access to federally-maintained rivers is that the river rights-of-way are analogous to the railroad land grants of the late 1800s. The land grants, controversial though they were and are, were a matter of public policy to encourage settlement on public lands that were being sold for $1.25 an acre before access to transportation was guaranteed. The grants served that purpose and also increased the price of government lands, benefits that must be considered along with the legendary abuses, poor management and political briberies that followed on some roads and in some regions. The railroad grants were not 100 percent industrywide subsidies.

The fight over federal waterway fees is far from finished. Congress is scheduled to hold a joint conference on the waterways bill when the legislators return Monday from their July 4 holiday recess. But the House Ways and Means Committee is considering calling the bill back on a constitutional joint of order. The fee provision was added by the Senate, and under the Constitution, all revenue-producing measures must initiate in the House.

The time has come to reassess our federal transportation policies to make sure that

government subsidies aren't capricious in creating competitive advantages for one industry over another. In the end, it's usually the consumer who pays the bill in higher taxes or higher prices.

If the waterways industry indeed can provide lower freight rates because it is fuel-efficient, because it is more competitive within the industry as well as with other modes, and because it needs less labor than railroads or pipelines or trucks, it will continue to enjoy a competitive advantage under a fair system of user fees.

But the bill now before Congress is not the answer. It is not fair to the waterway users or to the regions that depend on their services. It is only a poorly-patched compromise that cannot end the inequities on our federal transportation subsidies.

[From the Huntington (W. Va.) Herald-Dispatch, Nov. 9, 1977]

TAX ON RIVER TRAFFIC MAY BE CERTAIN, BUT WHAT OF FUTURE?

Almost two centuries ago, the Northwest Ordinance of 1787 prescribed that use of the nation's inland waterways be "forever free, without any tax, impost or duty." Nevertheless, Congress is getting ready to put the final touches on legislation that would impose the first user fees in river history.

For years, of course, there have been those—especially the railroads—who have complained that, given the millions of federal tax dollars spent on locks and dams along the Ohio and the nation's other navigable rivers, barge operators have been getting a "free ride."

But it wasn't until earlier this year the stage was set for a change in the situation. What happened was that President Carter announced he would oppose replacement of the obsolete locks at Alton, Ill., just north of St. Louis— the busiest locks and the biggest bottleneck on the entire Mississippi—unless the reconstruction were tied to enactment of a river tax on commercial users.

Last month, the House of Representatives approved a bill that authorizes $432 million for a new lock and dam at Alton—and, at the same time, would place a tax of four cents a gallon (increasing to six cents a gallon by 1981) on fuel bought by users of the 25,000-mile inland waterway system.

Back in July, the Senate approved an even higher tax, so the House and Senate must resolve their differences before the legislation can be sent to Carter.

For the most part, rivermen seem to be steeling themselves to accept the tax as inevitable. We share that feeling.

But they also warn that, once the precedent is set, it will be all too tempting for Uncle Sam, no matter how modest the tax might be at first, to hike the tax every year or so to the point where it becomes quite a burden not only to the towing industry but also to the consuming public which ultimately pays any and all taxes. Meanwhile, of course, there's no telling how many bureaucrats would have to be hired to oversee collection of the new river fees.

River cities such as Huntington obviously have a big stake in seeing to it that such a sad situation doesn't come to pass.

CRIMINAL CODE REFORM ACT OF 1977

The Senate continued with the consideration of S. 1437.

UP AMENDMENT NO. 1143

Mr. ALLEN. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. Does the Senator seek unanimous consent?

Mr. ALLEN. Yes; I ask unanimous consent that it may be considered at this time.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN) proposes an unprinted amendment numbered 1143:

On page 95, line 12, after the word "from,", insert the word "lawfully".

Mr. ALLEN. Mr. President, the bill makes it an offense if anyone, "by force or threat of force, intentionally injures, intimidates, or interferes with another person because he is or has been intimidated, or in order to intimidate him or any other person from, participating in speech or assembly opposing a denial of opportunity to participate"—and I will capsule the balance of it—to participate in civil rights activities, is guilty of an offense.

The key word is that they may not intimidate one from participating in speech or assembly; it does not say that this assembly or speech must be lawful. In other words, under this, there could be unlawful assembly and still you would be forbidden to seek to put a stop to that or interfere with it in any way, even though the assembly was unlawful.

This merely requires that the assembly be lawful, that the participation be a lawful participation. I have discussed it with the manager of the bill, and I hope he will agree that it may be accepted.

Mr. KENNEDY. Mr. President, we are willing to accept the amendment.

If the Senator wishes to add "lawfully," there is no objection, at least by me, in accepting that.

It certainly is acceptable to the members of the committee, and I hope the amendment will be adopted.

Mr. ALLEN. I thank the distinguished manager of the bill.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Mr. President, I have a series of amendments that I would like to submit at this time to the managers of the bill and to their staffs for consideration on a possible acceptance of the amendments. In order that they might have an opportunity to consider these amendments and possibly expedite the further consideration of the bill, I suggest the absence of a quorum at this time, in order that they might have a look at these amendments.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore (Mr. DECONCINI). Without objection, it is so ordered.

UP AMENDMENT NO. 1144

(Subsequently numbered amendment No. 1676)

Mr. MATHIAS. Mr. President, I send an amendment to the desk.

The ACTING PRESIDENT pro tempore. Does the Senator seek unanimous consent that his amendment be in order at this time?

Mr. MATHIAS. I so request.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS) proposes unprinted amendment No. 1134.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 237, after line 35, insert the following:

Before any prosecution may be instituted, for an offense described in this subsection in which venue in more than one district appears to be lawful, the Assistant Attorney General of the Criminal Division of the Department of Justice shall determine whether the proposed prosecution represents an appropriate exercise of discretion with respect to venue.

Mr. MATHIAS. Mr. President, this amendement is a very simple one. It is one as to which I understand the Department of Justice has no obligation. It simply provides a departmental check on multidistrict cases before they are instituted by having an Assistant Attorney General officially take recorded responsibility for the decision to bring the case.

At the present time there is some difficulty in discerning exactly what departmental policy is regarding the use of multidistrict venue provisions.

I might say that this is similar to a provision in S. 1566 relating to wiretaps which require the Attorney General to sign off on foreign intelligence wiretaps. So this is in no way a novel proceeding, and it is one that I urge the Senate to adopt.

Mr. ALLEN. Mr. President, I call for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is not a sufficient second.

Mr. ALLEN. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ALLEN. I call for the yeas and nays on the pending amendment.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. ALLEN. Mr. President, I suppose it is well to be in the Chamber at all times, and I try to be as much as possible. I did have to leave the Chamber a few moments ago, and I was gone about 3 minutes. When I got back I found this amendment pending by the distinguished Senator from Maryland (Mr. MATHIAS).

It goes back to the issue of venue that we have had up, over, and under in the last 2 days.

This amendment would seem to be a further limitation. Even though they have already limited where these prosecutions can be instituted, and have already limited it, they are not satisfied with that limitation. They seek to limit it further by this language:

Before any prosecution may be instituted, for an offense described in this subsection in which venue in more than one district appears to be lawful, the Assistant Attorney General of the Criminal Division of the the Department of Justice shall determine whether the proposed prosecution represents an appropriate exercise of discretion with respect to venue.

So, Mr. President, venue being as restricted as it is under the committee amendments, the Senator from Maryland apparently wants a further restriction. Because I had only 2 or 3 minues to look at this amendment, if I am wrong in my assessment I am sure the distinguished Senator from Maryland will straighten me out on it. It appears if a district attorney seeks to bring a prosecution against an alleged law violator before he institutes that proceeding he is to clear it with an assistant attorney general who shall determine whether the proposed prosecution represents an appropriate exercise of discretion with respect to venue.

It seems to me that this is just another barrier placed in the way of proceeding with prosecution of alleged law violators.

I hope that the amendment will not be insisted upon. If it is, at the appropriate time I plan to make a motion to table the amendment.

I yield the floor.

Mr. MATHIAS. Mr. President, I wonder if the Senator will just respond to one question. The Senator seems to imply that this is the first time he has seen this amendment; is that correct?

Mr. ALLEN. The first time I have seen the amendment; yes.

Mr. MATHIAS. I express my apologies to the distinguished Senator, because I want him to know that I specifically instructed my staff to give a copy of it to his staff yesterday, and I believe they have done so.

Mr. ALLEN. I do not always work through my staff. It has not been called to my attention.

Mr. MATHIAS. That is a grave oversight for which I want the Senator to have my personal apologies.

Mr. ALLEN. I certainly accept the distinguished Senator's apology.

Mr. MATHIAS. I want the Senator to know that a copy was sent to him, and I do not know through what mischance it did not reach him. It was not sent through the mail so we cannot blame it on the mail this time.

Mr. ALLEN. I appreciate the Senator's consideration. Had I received a copy of it I might be a little better prepared to oppose it, but I will just have to oppose it with my limited capabilities and lack of knowledge and lack of study of the amendment.

Mr. MATHIAS. I have one correction in the short statement I made earlier. I had said earlier the Department of Justice had no objection to it. I understand that was an understatement. In fact, the Department of Justice does endorse this and will find it helpful in the enforcement of the obscenity laws. I am sure the Senator from Alabama wants to do everything possible to improve the enforcement of the law in this respect.

Mr. ALLEN. Yes, I do. I just have a different construction from what the Justice Department has of this, because it would allow the Justice Department to say to a district attorney he could not start a prosecution without being given the go-ahead by the Assistant Attorney General, which may or may not be forthcoming.

I hope the Senator will not insist on the amendment. And I hope he will ask unanimous consent that the amendment might be withdrawn.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MATHIAS. Mr. President, in view of the fact that the Senator from Alabama feels he was taken by surprise by this amendment, I ask unanimous consent that it be temporarily laid aside.

Mr. ALLEN. Reserving the right to object, and I shall not object, I am not basing it on the fact that I was not advised of the amendment. Actually the distinguished Senator is under no obligation to furnish me with amendments that he plans to introduce, and I really do not know why the Senator was kind enough to do that.

Mr. MATHIAS. The fact is that I did.

Mr. ALLEN. And I am advised by a member of my staff that the Senator did. I knew he had because he said so, and I had received a copy of the amendment.

I would like it withdrawn on the basis of its merit or lack of merit rather than the fact that the Senator from Alabama was taken by surprise. I do not charge that.

Mr. MATHIAS. On whatever ground, Mr. President, I ask that it be temporarily laid aside.

Mr. ALLEN. Well, I object to its being temporarily laid aside. I would ask the Senator to withdraw the amendment.

Mr. MATHIAS. I will make a point of order that a quorum is not present.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KENNEDY. I ask unanimous consent that the Mathias amendment be set aside.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. KENNEDY. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. NELSON). Without objection, it is so ordered.

UP AMENDMENT NO. 1145

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the amendment will be in order. The clerk will state it.

The second assistant legislative clerk read as follows:

The Senator from Delaware (Mr. BIDEN) for himself and Mr. METZENBAUM proposes unprinted amendment numbered 1145:

On page 12, after line 3, add after the item relating to section 4031 the following new items:

"4032. Restriction on Employment Disabilities

"4033. Attorney General Regulations.

On page 311, after line 30, add in the chapter analysis after the item relating to section 4031 the following:

"4032. Restriction on Employment Disabilities.

"4033. Attorney General Regulations."

§ 4032. Restriction on Employment Disabilities

"(a) Employment of Offenders. Notwithstanding the provisions of any other federal statute, a federal government agency may not consider that a person has been convicted of a federal, state, or local offense in determining whether to grant the person employment or access to employment, *unless:*

"(1) there is a reasonable relationship between the conduct constituting the offense that was the subject of the conviction and the profession, occupation, or employment; and

"(2) if three years have expired since the later of the person's sentencing and his release from any imprisonment, the government agency determines that, despite the passage of time, the person's criminal offense and his behavior and character since such sentencing or release render the person unsuitable to engage in the profession, occupation, or employment.

"(b) Statement of Reasons for Nonemployment. If a federal government agency denies employment or access to employment to an applicant in whole or in substantial part because of his conviction for a federal offense, the government agency shall provide the person with a statement of the reasons for the denial.

"(c) Inapplicability to Certain Applicants.—This section does not apply to:

"(1) an applicant for admission to the

bar of a federal court, or for employment as a law enforcement officer with a federal government agency; or

"(2) a candidate for appointment by the President to a federal office.

On page 311, line 32, delete "No" and insert "A".

On page 311, line 32, delete "shall" and insert in lieu thereof "may not".

§ 4033. Attorney General Regulations.

"The Attorney General shall issue regula- subchapter.

Mr. BIDEN. Mr. President, the amendment, I think, is fairly self-explanatory, but I shall take 2 minutes to elaborate on it, if I may.

One of the things that seems to have been concluded by people on all sides of this criminal code reform issue is that we do not know very well how to rehabilitate, if we know at all. But one thing we have pretty well figured out is that once a person has served time, whatever that time is, in a Federal, State, or local facility, the chances of that person being a recidivist, going back to jail, has some relationship to whether or not that person is able to get permanent employment somewhere. That is, the people who have served time and end up, after serving their time, having a good, decent job, by which they can provide for their families and themselves and their self-esteem, tend to be the ones who do not go back into jail.

At the Federal level and at the State level, we have provisions that say an ex-convict cannot work in a Federal agency or cannot get a license at a State level to be a barber or cannot work for the sewer department. Although I would like to see, eventually, a policy where that entire mentality is stricken at the State and local and at the Federal level, this amendment merely speaks to the Federal level. It says that if there is a convicted felon of a Federal offense, and that person, after having served his time and after 3 years have expired, applies for a job with a Government agency, he cannot be denied employment with that agency unless it can be shown that there is a relationship between the crime the person committed and the job. That is, they could argue that it does not make good sense to put a convicted rapist, even though he has been out 3 years, working in a women's prison, or a bank embezzler working at the Fed, or whatever. If they can show a nexus between the crime for which time was served and the job being sought, they could deny employment on that ground.

Furthermore, as the amendment states, if there is, after 3 years having expired, evidence that the person seeking the job, the ex-con, has not abandoned his or her former ways, their character is still in serious question—they still have a criminal character—they can, in fact, deny employment then. But when they do it under that circumstance or the other, they must put in writing why that person is being denied the job.

It is as simple as that. The idea was toyed with of expanding this concept to say that State governments could not deny State licenses to Federal ex-cons. Although I think that is constitutional, I do not believe it is practical at this point. So I do not want to confuse people. We are not, at this point, in any way impacting upon the States' ability to say, "We will not grant a license to a local, State, or Federal offender." They can still do that, although I quite frankly think that is ill-advised. They can still do that. This merely affects Federal employment.

One last thing. There are two caveats: If a person is convicted of a Federal offense and serves time, he or she can still be denied access to practice before the Federal courts, the Federal bar. And he or she can still be denied access, on its face, from working for a Federal police agency, a Federal law enforcement agency. So those prohibitions are not lifted.

It does say that if a person had been convicted when he or she was 19 years old of grand larceny of an automobile that they took from Maryland into Delaware, and 20 years later. they go for a job—after having gotten a CPA and practiced, he or she wants to work for the IRS—they could not be denied employment with the IRS merely because, 20 years ago, they had committed a crime for which they served their time.

Again, in conclusion, Mr. President, the bottom line of all this is, it seems to me, if we could get ex-convicts jobs after they serve their time, we would have a potential to affect seriously the rate of recidivism. I think we now have contradictory Government policies.

I really have nothing more to say on it, Mr. President. I yield back whatever time is left.

Mr. KENNEDY. Mr. President, the Senator from Delaware raised this issue during the course of committee consideration on the legislation. He had some amendments dealing with this issue. At that time, we knew the Justice Department was working on this program.

It is an idea whose time has come and I think the Senator from Deleware deserves great credit for dealing with this issue.

Perhaps with the example that is set with this amendment, we can encourage positive responses by the States.

I think it is warranted. It is justified. I heard the presentation in our committee for this and it was illustrated with a series of examples involving human tragedy, individuals who obviously were interested in trying to join the labor market. It seemed every door was closed to them, even though the employment they were seeking was far removed from their crimes.

It seems to me to be an important beginning. It seems to me it would be a useful addition to the legislation.

So, if there is really no objection to this, I would hope we could accept it. I know the Senator is going to continue to work on this. I know the Justice Department will.

I am hopeful we can make some progress in this area with the amendment of the Senator.

Mr. THURMOND. Mr. President, I would like to ask the distinguished Senator a question.

As I understand, the Justice Department is working on this matter now. Have they recommended approval of this?

Mr. KENNEDY. As I understand, the Senator from Delaware has been working in this area. The Justice Department also. The recommendation which they are presenting here is basically what has been worked out by the Justice Department.

Mr. THURMOND. I think the Senator can best answer this.

I would like to inquire whether the Justice Department has recommended this amendment, or something similar?

Mr. BIDEN. The Justice Department, if I may answer, has recommended this amendment.

During our negotiating stage, they indicated they would like to see something beyond this. But the ultimate conclusion is that what I introduced was not only recommended, it is actually the language they helped me draft, their draftsmen actually sat down with the language.

Although, I must tell the Senator I did disagree with the Justice Department on extending it at this time to include States. That is the only difference.

They do agree with this, although they would like it to go further. They accept this version.

Mr. THURMOND. Is there any way here to protect the Government in security matters, for security positions?

Mr. BIDEN. Clearly, there is an absolute prohibition.

I do not have the subsection before me—subsection (c) says that an applicant for admission to the bar of the Federal courts or for employment as a law enforcement officer with the Federal Government, or Government agency.

So this would include the CIA, the NSA, the FBI.

Mr. THURMOND. How about Defense?

Mr. BIDEN. Defense Department, any agency.

Mr. THURMOND. Does that say "Defense," too?

Mr. BIDEN. No; it does not. But I think the rational nexus would carry that.

I would have no objection to including that.

Mr. THURMOND. Would the Senator be willing to add "Defense and State Departments"?

I think those two are matters of tremendous concern to this Nation.

Mr. BIDEN. I would be willing to add "Defense" to that. I would not be willing to add the "State Department" because, right now, if there is a law enforcement aspect to the State Department's operation, they would be precluded. But I would not want it to be thought they could preclude someone from being a typist at the State Department because they had been convicted of a crime.

Mr. THURMOND. Would the Senator amend it to do it this way? Would the Senator then include "Defense" and then "any position where clearances are required"? I think in that way it might——

Mr. BIDEN. Yes; I would have no objection to that at all.

Mr. THURMOND. If the Senator will

send up an amendment along those lines, I would not object further.

Mr. BIDEN. If the Senate will give me just a moment, I will do so.

UP AMENDMENT NO. 1146—MODIFICATION OF UP AMENDMENT NO. 1145

Mr. BIDEN. I would like to suggest language that would, I think, meet the Senator's concern, and a valid one.

If we add a third section that says that an applicant for any position which requires a security clearance—just any position—any position in the Government that required security clearance, they would be precluded from having Federal employment as a consequence of a former Federal crime.

That would include all, Defense, Agriculture, State Department. That would include everything.

Mr. THURMOND. Mr. President, in view of that, I will not object.

Mr. BIDEN. I would like to send my amendment to the desk and ask the clerk if he will read the amendment, which is a new section 3.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Delaware (Mr. BIDEN) proposes an unprinted amendment numbered 1146 to his unprinted amendment No. 1145:

At the end of section 4032(c)(2) add the following subsection:

(3) an applicant for any Federal position which requires a security clearance.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment will be so modified.

Mr. HART. Mr. President, I support of the proposal offered by Senator BIDEN. Ask anyone on the street why a criminal should be punished and the likely response will be "because he deserves it." Ask the same person how severely the offender should be punished and he will likely respond that the punishment should be based on the seriousness of the offense.

The principle of "desert"—variously called "just deserts," or "commensurate deserts" or simply "proportionality"—figures prominently in everyday thinking about crime and punishment. This principle involves a focus on the past, rather than any prediction about the future.

The focus on the past once held the predominant place in the jurisprudence of sentencing. But in recent times it has been almost eclipsed by a focus on the future: On the deterrent effect of punishment, or on the offender's need for treatment or likelihood of recidivism. The "individualized" method of sentencing is often referred to as the "medical" or "rehabilitative" model.

But one effect of the individualized system of sentencing—unforeseen by those who, for humanitarian reasons, placed so much faith in its merit—has been a system characterized by glaring inconsistencies. Offenders convicted of similar crimes under similar circumstances are often given widely differing sentences.

One purpose of the sentencing provisions of the Criminal Code Reform Act is to reduce unwarranted disparities in sentencing. A Sentencing Commission is established to promulgate sentencing guidelines and is directed to develop a system that is fair and equitable: A system which reflects a general definition of jusitce under which like cases are treated alike and unlike cases are treated proportionately to their differences.

Mr. President, the sentencing provisions of this bill represent the most sweeping reform in sentencing this country has ever had. We are entrusting a great deal of faith in the Sentencing Commission to develop acceptable guidelines. I think it is important, therefore, that our direction be as clear as it can be.

I think that the sentencing provisions of the bill on the whole are excellent. I am concerned, however, about certain feautres of section 994 which relate to factors the Sentencing Commission considers in establishing categories of defendants for use in the guidelines. I am concerned that these factors might result in guidelines which deviate too much from the principle of "commensurate deserts," and that the result could be disparate sentences based on factors totally unrelated to the seriousness of the offense.

I recognize that the objective of commensurate deserts can conflict with other objectives. For example, if an offense is not serious but its repeated commission places an undue burden on the people or the courts, deterrence should also be considered as one purpose of punishment.

But the principle of commensurate deserts is a requirement of justice, while other factors or concerns relate not to justice, but to controlling crime. These other considerations are legitimate and important but should never be given priority over the requirement of justice that there should be equal treatment for the equally deserving.

The factors outlined in subsection (d) of section 994, which appear on pages 352 and 353 of the bill, would allow the Commission's guidelines to encourage the length of a prison term in some cases to be based on factors such as education, vocational skills, previous employment record, family ties, and community ties. While such factors are perfectly appropriate for use in determining a sentence other than imprisonment, it seems to me to be patently unfair to put one person in prison longer than another simply because he has no family, or education, or ties in the community.

I think the only factors which normally should be considered in imposing a term of imprisonment are the seriousness of the offense; the mental and emotional condition of the defendant, to the extent that such condition mitigates the defendant's culpability; the culpability of the defendant; his role in the offense; and his prior criminal convictions.

Mr. President, the Senator from Delaware demonstrates his continued deep concern for the issue of sentencing by raising this important issue. I support the amendment; I think it has great merit.

I am sure the distinguished floor manager of the bill, the Senator from Massachusetts as well as the distinguished Senator from South Carolina, is sympathetic to our concern. I understand the general reluctance to tie the Commission's hands by stating categorically that under no circumstances should some of these factors be considered for purposes of determining a term of imprisonment.

But it should be pointed out that this amendment in no way would tie the hands of a sentencing judge. A judge is allowed, under the provisions of the bill, to sentence outside the guidelines for good cause shown. This amendment, therefore, would retain the degree of flexibility our judges need to sentence in an intelligent fashion. At the same time, however, this amendment makes a significant contribution to certainty of punishment—one of the principal purposes of the sentencing provisions of the bill.

What this amendment says is clear: No one should be imprisoned for reasons other than what they have done in the past—the seriousness of the offense, their role in committing it, their criminal history. No one should be imprisoned because of his education, his vocational skills, or family or community ties, or lack thereof.

I hope my colleagues see fit to support this excellent amendment.

Mr. BIDEN. Mr. President, I would like to thank the managers of the bill for their time on this and the kind words by the Senator from Massachusetts for me.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from Delaware.

The amendment, as modified, was agreed to.

UP AMENDMENT NO. 1147

Mr. ALLEN. Mr. President, I send an amendment to the desk and ask unanimous consent that it may be in order to consider it at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN) proposes an unprinted amendment numbered 1147:

On page 261, line 22, after the word "defendant." insert the following: "The motion shall state with particularity in writing the grounds therefor."

Mr. ALLEN. Mr. President, section 3611 of the new proposed code blithely eliminates the minimal safeguard of written notice of the grounds for a motion for a hearing to determine the mental competency of a defendant. Existing law permits such a motion to be made by either the defendant or the Government; however, the motion must state in writing the grounds supporting the belief that there is reasonable cause to believe that the defendant is mentally incompetent to understand the nature of the proceedings against him or to assist in his defense. While it is true that rule 47 of the Federal Rules of Criminal Procedure provides that all motions must state the grounds upon which they are made, rule 47 does not provide the additional safe-

guard of written notice which is now provided in existing statute. (See 18 U.S.C. 4244.) Given the serious potential for abuse of a defendant's civil rights in a proceeding based on a Government motion for a hearing to determine competency, there is no reason whatsoever not to continue in the new proposed code the minimal safeguards provided in existing statute.

I have discussed this matter with the distinguished manager of the bill, and I hope he will agree that it may be adopted.

Mr. KENNEDY. Mr. President, there is no objection to this amendment. I think it is advisable. It is consistent with the other provisions of the bill, where we require that there be written statements. This insures that in the area of mental competency there will be written statements indicating with particularity, the reasons for a hearing.

At the present time, I understand that in all instances the reasons are in writing, but we should insist upon it.

This amendment is useful in clarifying the intention, and I hope it is adopted.

Mr. THURMOND. Mr. President, we have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. ALLEN. Mr. President, I hope we will be able to finish the bill on Monday. We have submitted approximately 10 amendments to the managers of the bill, in the hope that they will be able to agree to them or point out possible revisions of the amendments that would make them acceptable. They have been submitted to the managers in order to expedite the movement of the bill, and I hope that on Monday we can move on toward passage of the bill. That being the case, I hope that in a short while we will be allowed to do this, in accordance with the wishes of the distinguished majority leader.

At this time, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 1 P.M. ON MONDAY, JANUARY 30, 1978

Mr. ROBERT C. BYRD. Mr. President, in view of the fact that on Monday the Judiciary Committee will be conducting hearings with respect to the nomination of Mr. Webster for the office of FBI Director, I should think that it would be well for the Senate not to come in until, say, 1 p.m.

The distinguished manager of the bill that is currently pending on the floor, Mr. KENNEDY, is a member of the Judiciary Committee. The ranking member of the committee who is handling the bill at this point on the floor is also on the Judiciary Committee. I am on the Judiciary Committee, as is Mr. ALLEN, who has been very active in participating in the consideration of the unfinished business. Obviously, it would be to the advantage of these Members, who want to be present at the confirmation hearings on Mr. Webster, and who also are needed on the floor with respect to the pending business.

Therefore, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 1 p.m. on Monday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR CONSIDERATION OF S. 1437 ON MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday, after the two leaders or their designees have been recognized under the standing order, the Senate resume the consideration of the unfinished business.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE MEETING

Mr. HATHAWAY. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate today to receive a general intelligence briefing from Adm. Stansfield Turner of the Central Intelligence Agency.

The PRESIDING OFFICER. Without objection, it is so ordered.

CRIMINAL CODE REFORM ACT OF 1977

The Senate continued with the consideration of S. 1437.

Mr. ROBERT C. BYRD. Mr. President, I have just had a conversation with the distinguished Senator from Alabama, in which conversation I asked the Senator if it would be possible for him to lay before the Senate an amendment today, at the close of business, so that we could get a good running start on Monday, and possibly have a time agreement on his amendment, so that Members would know at approximately what time on Monday we might expect a vote. I believe he is prepared to respond.

Mr. ALLEN. I thank the distinguished majority leader for his consideration with respect to the hour of convening of the Senate on Monday, in view of the important hearings that are being held by the Judiciary Committee, of which a number of us are members and at the same time are interested in the consideration of this bill.

Prior to the recess, I will call up an amendment, and I do not believe it will be necessary that a time limit be agreed upon, because the debate, so far as the Senator from Alabama is concerned, will be of short duration.

Mr. ROBERT C. BYRD. Very well. I thank the Senator.

Mr. ALLEN. If the Senator will request a quorum call, I will have the amendment in about 5 minutes.

Mr. ROBERT C. BYRD. I will do that.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, there being no morning business today, I ask unanimous consent that there now be a brief period for the transaction of routine morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries.

PROPOSED RESCISSION OF BUDGET AUTHORITY—MESSAGE FROM THE PRESIDENT—PM 144

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report, which, without being read, was referred to the Committee on Appropriations, the Committee on the Budget, the Committee on Foreign Relations, the Committee on Banking, Housing, and Urban Affairs, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Commerce, Science, and Transportation, the Committee on Armed Services, the Committee on Human Resources, the Committee on the Judiciary, and the Committee on Finance, jointly, pursuant to the order of January 30, 1975:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report three proposals to rescind a total of $55.3 million in budget authority previously provided by the Congress. In addition, I am reporting six new deferrals of budget authority totalling $1,517.1 million and seven revisions to previously transmitted deferrals increasing the amount deferred by $2.2 million in budget authority.

The rescission proposals affect the military assistance program, the Department of State's appropriation for contributions for international peacekeeping activities, and the revolving fund of the Federal Home Loan Bank Board.

The new deferrals and revisions to existing deferrals involve programs of the Departments of Agriculture, Commerce, Health, Education, and Welfare, Justice, Labor, Transportation, the Treasury, and the Panama Canal Zone

Government, the National Science Foundation, and the United States Information Agency.

The details of each rescission proposal and referral are contained in the attached reports.

JIMMY CARTER.

THE WHITE HOUSE, *January 27, 1978.*

REPORT ON SPECIAL INTERNATIONAL EXHIBITIONS—MESSAGE FROM THE PRESIDENT—PM 145

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report, which, without being read, was referred to the Committee on Foreign Relations:

To the Congress of the United States:

As required by law, I transmit to the Congress the Thirteenth Annual Report on Special International Exhibitions conducted under the authority of the Mutual Educational and Cultural Exchange Act of 1961 (Public Law 87–256).

This report covers exhibitions presented abroad by the U.S. Information Agency at international fairs and under East/West Cultural Exchange agreements, as well as exhibitions and labor missions presented abroad by the Department of Labor and the Department of Commerce. This report covers events prior to the beginning of my Administration.

JIMMY CARTER.

THE WHITE HOUSE, *January 27, 1978.*

PRESENTATION OF PETITIONS

Mr. PELL. Mr. President, on behalf of myself and my distinguished colleague (Mr. CHAFEE), I present a memorial adopted by the Senate of the General Assembly of Rhode Island. I ask unanimous consent that it be printed in the RECORD and appropriately referred.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (POM–448), which was referred to the Committee on the Judiciary, reads as follows:

POM–448

Senate resolution memorializing the President and the Congress of the United States to proclaim the week of April 23 through April 29, 1978 as National Forgotten Victims Week.

Whereas, it is the duty of all citizens and institutions to play positive roles in improving the plight of victims of violent crime and their survivors, and to restore effectiveness in the administration of justice; and

Whereas, according to the National Institute of Law Enforcement and Criminal Justice in Washington, D.C., older citizens in this country suffer more crime than almost any other group, and seldom fully recover, financially, physically or psychologically; now therefore be it

Resolved, That the senate of the state of Rhode Island and Providence Plantations hereby memorializes the President and the Congress of the United States to proclaim the week of April 23 through April 29, 1978 as National Forgotten Victims Week; and be it further

Resolved, That the secretary of state be and he hereby is authorized and directed to transmit duly certified copies of this resolution to President Carter, the presiding officer of the United States senate, to the presiding officer of the United States house of representatives, and to the senators and representatives from Rhode Island in the congress of the United States.

Mr. PELL. Mr. President, last September I introduced a bill, S. 2137, to provide that social security benefit increases will not be considered as income or resources for the purpose of determining the eligibility for or amount of assistance which any individual or family is provided under certain Federal housing laws.

By preventing social security cost-of-living increases from being treated as income for Federal housing eligibility or rent determination, this bill would ease the burden now placed on the nearly one-half million social security recipients living in federally subsidized housing. In my own State of Rhode Island over 3,000 elderly occupants of Federal housing suffer rent hikes every time they receive social security increases, the most nominal of income increments. I hope during this session of Congress my bill will receive the serious consideration it deserves.

And in this regard, I present to my colleagues a memorial from the House of the General Assembly of Rhode Island requesting this Congress to eliminate rent increases which are tied to social security increases for senior citizens in Government-subsidized housing apartments. I ask unanimous consent that it be printed in the RECORD and appropriately referred.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (POM–449), which was referred to the Committee on Banking, Housing, and Urban Affairs, reads as follows:

RESOLUTION

Whereas, the current state of the economy has had an adverse effect on most Americans, particularly the elderly who have fixed incomes; and

Whereas, maintaining one's dignity, health and spirit while living within the confines of a fixed income is a monumental task; now, therefore, be it

Resolved, That this house of representatives of the state of Rhode Island and Providence Plantations hereby respectfully requests the congress of the United States to eliminate rent increases which are tied to social security increases for senior citizens in government subsidized housing apartments; and be it further

Resolved, That the secretary of state be and he hereby is authorized and directed to transmit a duly certified copy of this resolution to the senators and representatives from Rhode Island in the congress of the United States.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JACKSON, from the Committee on Energy and Natural Resources, without amendment:

S. Res. 367. An original resolution authorizing additional expenditures by the Committee on Energy and Natural Resources. Referred to the Committee on Rules and Administration.

By Mr. ABOUREZK, from the Select Committee on Indian Affairs, without amendment:

S. Res. 368. An original resolution authorizing additional expenditures by the Select Committee on Indian Affairs. Referred to the Committee on Rules and Administration.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. DECONCINI (for Mr. FORD):

S. 2442. A bill for the relief of Natvarlal Govindji Patel; to the Committee on the Judiciary.

By Mr. ABOUREZK:

S. 2443. A bill to provide for congressional review of proposed changes in postal services; to the Committee on Governmental Affairs.

By Mr. RANDOLPH:

S. 2444. A bill to amend the Act of August 8, 1972 (Public Law 92–367) relating to a national program of inspection of dams; to the Committee on Environment and Public Works.

By Mr. MATSUNAGA:

S. 2445. A bill for the relief of Jutta Renate Kruparz; to the Committee on the Judiciary.

S. 2446. A bill for the relief of Caroline Valdez Sulfelix; to the Committee on the Judiciary.

By Mr. WILLIAMS (for himself and Mr. INOUYE):

S. 2447. A bill to amend title 5, United States Code, to include as creditable service under the civil service retirement system periods of service as contract technicians by individuals hired by private authority to perform work under Federal supervision pursuant to a contract between such private authority and the Federal Government, and for other purposes; to the Committee on Governmental Affairs.

By Mr. METZENBAUM (for himself and Mr. ANDERSON) (by request):

S. 2448. A bill to amend the Emergency Natural Gas Act of 1977 and the Natural Gas Act, as amended, to provide authority to institute emergency measures to minimize the adverse effects of natural gas shortages, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HOLLINGS (for himself and Mr. THURMOND):

S. 2449. A bill to provide in cooperation with the States benefits to individuals who are totally disabled due to employment-related brown lung disease and to the surviving dependents of individuals whose death was due to such disease or who were totally disabled by such disease at the time of their death; to the Committee on Human Resources.

By Mr. KENNEDY (for himself, Mr. SCHWEIKER, Mr. WILLIAMS, and Mr. JAVITS):

S. 2450. A bill to extend the assistance programs for community mental health centers and for biomedical research, and for other purposes; to the Committee on Human Resources.

By Mr. GARN:

S. 2451. A bill for the relief of Cho Tung Tang; to the Committee on the Judiciary.

By Mr. JACKSON (for himself, Mr. PELL, and Mr. GOLDWATER):

S.J. Res. 106. A joint resolution to provide for the reappointment of A. Leon Higginbotham, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution; the Committee on Rules and Administration;

S.J. Res. 107. A joint resolution to provide for the reappointment of John Paul Austin as a citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on Rules and Administration; and

S.J. Res. 108. A joint resolution to provide for the appointment of Anne Legendre Armstrong as citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ABOUREZK:

S. 2443. A bill to provide for congressional review of proposed changes in postal services; to the Committee on Governmental Affairs.

CHANGES IN POSTAL SERVICES

Mr. ABOUREZK. Mr. President, I am today introducing legislation designed to require the Postal Service to seek congressional approval for any proposed changes in the level or types of postal services. An identical bill, H.R. 9146, was introduced by Congressman NIX last September along with 23 members of the House Post Office and Civil Service Committee. The House Post Office and Civil Service Committee incorporated the provisions of this bill into H.R. 7700, the omnibus postal reform bill, which was favorably reported by the committee on October 18.

Under this bill when the Postal Service determines that there should be any changes, the Postal Service should submit to each House of Congress a detailed statement of the proposed change, including estimates of the impact of the changes on the public, business mail-users, service levels, postal finances, and postal employment. The proposed change would be considered by the appropriate committees of the Congress. If within 60 days either House adopts a resolution of disapproval of the change, the change cannot become effective.

Under the law as it presently stands, whenever the Postmaster General wishes to make a change in postal services which would have "a nationwide or substantially nationwide effect" he must seek the advice of the Postal Rate Commission. However, he is not required to follow their advice. Establishing postal policy is the constitutional responsibility of the Congress, policy decisions should not be left up to one individual, the Postmaster General.

Congress must reassert its constitutional responsibility and role in determining postal policy. For too long the Postal Service has not had to defend its policies and priorities before the Congress, the administration, and the Nation. Since the Postal Service does not have to come to Congress for authorization of its programs or appropriations of most of its revenues, it has traditionally turned a deaf ear to the expressed sentiment of the Congress on postal matters.

The public should not be expected to bear the brunt of an evergrowing postal deficit that might eventually result in closing of small post offices throughout the country, and the curtailment of special services without the ability of the elected representatives of the people to review its policy decisions and pass on its finances.

In 1970, when Congress passed the Postal Reorganization Act, everyone had high hopes for reorganization and especially that it would lead to streamlined management and better services. After 7 years, however, it is the general consensus of everyone familiar with the Postal Service that the Postal Reorganization Act was a well-intentioned idea that failed. As a result, the past 7 years have been marked by reductions in services and ever-increasing postal deficits.

The best way to insure a congressional voice in postal policy is to require the Postmaster General to come to the Congress for approval of such changes. It is long past the time we reviewed the Postal Service operations and give ourselves a mechanism to do so regularly. The public expects it and the constitution demands it.

In the near future the Senate Governmental Affairs Subcommittee on Energy, Nuclear Proliferation and Government Services will once again be considering postal reorganization legislation. I would hope that any legislation the committee drafts will give serious consideration to the provisons of this bill and those included in S. 1692, a bill I cosponsored last year with Senators MELCHER, BURDICK, and MCGOVERN in addition to H.R. 7700 as recently reported by the House Post Office and Civil Service Committee. I, like many of my colleagues, have questions regarding certain aspects of H.R. 7700, however, I do believe that it is a necessary step in the right direction for dealing with the ever-growing problems confronting the U.S. Postal Service.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2443

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 3661 of title 39, United States Code, is amended to read as follows:

"§ 3661. Changes in postal services

"(a) When the Postal Service determines that there should be a change in the level or types of postal services, and such a change would have nationwide or substantially nationwide impact, the proposed change shall be submitted to the Congress in accordance with this section.

"(b) The Postal Service shall submit to each House of Congress a detailed statement of the proposed change, including estimates of impact upon the public, business mail users, service levels, postal finances, and postal employment.

"(c) A proposed change submitted under this section is subject to the provisions of sections 906 and 908 through 913 of title 5, United States Code except that the term 'proposed change' shall be substituted for the terms 'reorganization plan' or 'plan' each time they appear.

"(d)(1) for purpose of this section, a change in the level or types of postal services includes—

"(A) a change in the number of days each week mail is delivered over letter carrier, rural, and star routes;

"(B) a change in the number of days each week and hours each day post offices are open to the public to transact business;

"(C) an increase in the periods of time used as the standard for the timely delivery of mail matter as of September 1, 1977;

"(D) a change in the standards which would further restrict the eligibility to receive mail by letter carrier, rural, or star route delivery; and

"(E) changes in other levels and types of postal services which have been provided to the public generally.

"(2) For the purpose of this section, a nationwide or substantially nationwide change in service includes any change which has effect in more than one geographic or administrative region established by the Postal Service.".

(b) The heading for subchapter IV of chapter 36 of title 39 is amended to read as follows:

"Subchapter IV—Changes in Postal Services and Rate and Service Complaints".

(c) The table of sections of chapter 36 of title 39, United States Code, is amended by striking out the matter relating to subchapter IV and inserting in lieu thereof the following:

"Subchapter IV—Changes in Postal Services and Rate and Service Complaints

"3661. Changes in postal services.
"3662. Rate and service complaints.".

By Mr. RANDOLPH:

S. 2444. A bill to amend the act of August 8, 1972 (Public Law 92–367) relating to a national program of inspection of dams; to the Committee on Environment and Public Works.

NATIONAL DAM INSPECTION

Mr. RANDOLPH. Mr. President, today I introduce legislation to amend Public Law 92–367, the National Dam Inspection Act of 1972.

We have become increasingly aware in recent years of the dangers of unsafe dams. Six years ago the Buffalo Creek Dam disaster in West Virginia resulted in the deaths of 125 persons. In June of 1976 the Teton Dam failure in southeastern Idaho caused 11 deaths and hundreds of millions of dollars in damages. The Toccoa dam failure in Georgia last November claimed nearly 40 lives.

Members of the Congress have been aware of this problem. In 1972 a national program for dam inspection was authorized. The Corps of Engineers was directed to inspect non-Federal dams in the Nation, compile an inventory of all those conforming to certain size criteria, report inspection results to States, and recommend to the Congress a comprehensive national program for dam safety. The corps was to report to the Congress by July 1974, on the progress of the inspection program.

That report was submitted in November 1976. It contained an inventory of 49,329 existing dams, and estimated that nearly 40 percent, or approximately 20,000 of these dams were so located that dam failure could result in loss of human life and appreciable property damage.

Contrary to the mandate of the 1972

act, the corps did not actually inspect these dams. Their initial request for funding in 1972 was rejected by the Office of Management and Budget, which believed that inspection of non-Federal dams should be a State or local responsibility. The total financing for the dam inspection program from 1972 to 1977 was only $3 million, which was used for inspection guidelines and compilation of the inventory. While the 1972 act also provided for corps technical assistance to States on request, such assistance had to be provided from other existing funds, as no money was appropriated for these services.

The Corps of Engineers has estimated that a preliminary inspection of non-Federal dams would require $75 million annually for 5 years. The fiscal year 1978 appropriations bill contained $15 million for the dam inspection program. That money was not requested by the administration, but was added by the Congress in its continuing concern that his authorized program be implemented. The money was not allocated to the corps until after the Toccoa Falls disaster. It is being used to begin examination of dams posing the greatest hazards to population centers downstream.

Mr. President, there are many problems with the Federal inspection of non-Federal dams. My legislation addresses the two areas of right of entry and liability.

The majority of non-Federal dams are located on non-Federal property. The intent of the 1972 Dam Inspection Act was to permit the Corps of Engineers to have access ot damsites and pertinent records. I believe it is desirable to clarify this authority to avoid possible misunderstandings or disputes. This bill, therefore, clearly gives the Corps of Engineers right of entry to all damsites and pertinent records in order to accomplish the authorized inspection activities.

The bill also adds a new subsection to the act providing for priority in the courts for consideration of any judicial proceedings subsequent to dam inspection activities. The potential dangers presented by uninspected dams justifies timely resolution of disputes involving denial of entry to dam sites or access to pertinent documents.

Mr. President, this measure includes agents or contractors of the United States within the liability protection provided for in existing law. This clarifies and expands the application of the directive that no liability shall be created by this act or any action or failure to act under this act so that it protects all those performing dam inspection activities.

The Subcommittee on Water Resources has scheduled the first of our hearings on dam safety for Friday, February 3. We will address the provisions of this bill and other problem areas. Among these would be the capability of the engineering profession to conduct timely inspections of dams, the ability of the States to establish and implement their own dam inspection programs, the necessity of Federal financial and technical assistance to the States in such activities, and the advisability of Federal preemptive action in the case of dams in imminent danger of failure.

Mr. President, I summarize our thoughts on this problem of dam inspection. The increased number of non-Federal dam failures in recent years has resulted in a Federal attempt to inventory and inspect these dams. The inventory and assessment of State efforts in dam safety gives clear indication that the problem is worse than originally anticipated. There likely will be more substantial damages and loss of life in the future if nothing is done to inspect and repair existing dams and to put some sort of design controls over the construction of future dams. While these activities would ideally be undertaken by State efforts, it is clear that many States do not have the expertise or the resources available to do them. Some sort of Federal involvement is required.

We shall hear from the Corps of Engineers, States, the engineering community, and other interested and informed parties in the course of the February 3 hearing. It will be held in room 4200 of the Dirksen Senate Office Building, and will begin at 10 a.m.

By Mr. WILLIAMS (for himself and Mr. INOUYE):

S. 2447. A bill to amend title 5, United States Code, to include as creditable service under the civil service retirement system periods of service as contract technicians by individuals hired by private authority to perform work under Federal supervision pursuant to a contract between such private authortiy and the Federal Government, and for other purposes; to the Committee on Governmental Affairs.

CONTRACT TECHNICIAN SERVICE PERSONNEL ACT

Mr. WILLIAMS. Mr. President, I am, today, introducing a revised version of legislation which I originally offered during the 94th Congress to provide civil service retirement credit to certain contractor-furnished technicians who have been unfairly denied their benefits because of adverse Civil Service Commission rulings. I am delighted that the distinguished Senator from Hawaii (Mr. INOUYE) has once again joined me in sponsoring legislation to correct the inequity these individuals now experience.

The Federal Government for many years secured the services of skilled technical personnel through contracts with private companies. Though recruited by these private contractors, these technicians were paid by the Federal Government. Typically, contract technician service personnel (CTSP) performed communications and electronics functions, mostly for the Armed Forces. They were employed most widely in the years following World War II because of the technician shortage that developed following demobilization. The Federal Government, however, continued to contract for the services of CTSP through the 1950's and during much of the 1960's.

In 1963, the legality of CTSP contracts was called into question by the House Post Office and Civil Service Committee, and a subsequent decision of the Comptroller General of the United States issued on March 4, 1965, held that the contracts were illegal. This, of course, meant that jobs of CTSP were illegal. The Comptroller General's decision was based in part on an opinion of the Civil Service Commission's general counsel who concluded that CTSP did not comply with all the statutory provisions that define Federal employment. Under the law, a Federal employee is a person: First, whose work is a Federal function authorized by law or an Executive order; second, who works under the supervision and direction of a Federal employee or a member of the military; and third, who is appointed to Federal service by a Federal employee or a member of the military. While the Civil Service Commission conceded that CTSP met the first and second requirements, the Commission maintained that they did not meet the third.

As a result of the Comptroller General's decision, CTSP were given the opportunity to convert to Federal service along with their jobs. For the overwhelming majority of CTSP, conversion to Federal service did not cause any change whatsoever in their jobs. The last conversion took place in the summer of 1967. Unfortunately as former CTSP reach retirement age, they are discovering that the Civil Service Commission refuses to count their service as CTSP in determining their retirement benefits.

That former CTSP have been denied retirement benefits they deserve becomes evident when one examines the circumstances of their hiring, the nature of their employment, and the conflicting, often confusing, policies and actions of Federal agencies in this area.

While they were employed with the Federal Government, CTSP were considered equivalent to Federal employees. This is readily admitted in the opinion of the Civil Service Commission general counsel, which formed part of the Comptroller General's March 4, 1965, decision:

> From the information submitted by the Department of the Air Force in response to the Commission's request for factual information concerning the use of said contract technicians, it is apparent that there is no real distinction that can be drawn between the position filled by contract technicians and those filled by federal employees. Indeed, in some functions contract technicians and federal employees are used interchangeably.
>
> Daily tasks and temporary duty are assigned without regard to category. These contract technicians are integrated into the regular organizational structure of the Department of the Air Force.
>
> These contract technicians are under the supervision of a federal employee who directs their efforts, assigns tasks, and prepares the work schedules. The supervisor judges the quantity and quality of the work of these contract technicians.
>
> From the foregoing, we find that these contract technicians can only be employed in the work of the Department of the Air Force after they are approved by the contracting officer who is, of course, a federal employee and who has the power to remove them; that the supervision of their daily work is performed by a federal employee; and that, unquestionably, the contract technician is performing a federal function.

In the Korean war, CTSP performed a vital support function for the Armed Forces. They served side by side with military personnel and in many cases experienced the same dangers and suffered the same hardships. Many CTSP even wore the uniform of the branch of service with which they served and could be distinguished from military personnel only by the shoulder patch they wore.

Still, the Civil Service Commission has chosen to deny CTSP the retirement benefits they earned in service to their country. This denial is inconsistent with several court decisions and with the granting of civil service retirement credit to other groups of individuals with similar employment histories. In addition, the position of the Civil Service Commission contradicts the policies of the Federal agencies responsible for securing the services of CTSP in the first place.

In May 1947, a Federal district court held that the Federal Government had established an employer-employee relationship with a group of contractor-furnished personnel working for the Navy because the Federal Government paid the workers' salaries, even though they were carried on the contractor's payrolls. As a result of this decision, the Civil Service Commission was obligated to provide Federal retirement credit to these workers for the period of time that they were carried on the private contractor's payrolls. At least one other Federal court decision has reaffirmed such Federal responsibility for such contractor-furnished personnel.

In response to these Federal court decisions, the Civil Service Commission in October 1952, promulgated regulations which prohibited any agency from securing personnel for the performance of regular agency functions without regard to the statutory requirements and restrictions applicable to Federal employees in general. The regulations were intended to prevent the establishment of employer-employee relationships between the Federal Government and contractor-furnished employees which had resulted in Federal retirement credit for these employees. The Civil Service has argued that CTSP hired after 1952 were hired in violation of these regulations and should, therefore, not receive retirement credit. Interestingly enough, the Civil Service Commission has denied retirement credit to former CTSP hired prior to the issuance of the 1952 regulations, as well as to those employees hired afterward.

Regardless of whether former CTSP were hired before or after the 1952 regulations, the fact remains that Federal agencies continued to seek out and use CTSP services up until 1965. These agencies set the criteria for employment, solicited the employment of technical personnel through private contractors in accordance with these criteria and retained full control over the use and dismissal of CTSP. The Civil Service Commission's refusal to grant retirement credit to former CTSP for their time spent in this capacity unfairly penalizes them for the policies of the Federal agencies that employed them. CTSP had no responsibility for these policies. They had no reason to believe they were in error and had no reason to question them.

While it has held back retirement credit for former CTSP, the Civil Service Commission has accorded sharply different treatment to other individuals whose employment relationship with the Federal Government closely paralleled that of CTSP. For example, in a ruling issued on September 30, 1957, the Civil Service Commission granted Federal retirement credit to an individual employed by the Arizona State Extension Service—a federally funded activity operated under the direction of the U.S. Department of Agriculture. The person involved had not been appointed to the Federal service, and his supervisor was not a Federal employee. Yet, this individual and many others working for State extension services have been granted Federal retirement credit.

The denial of retirement benefits has had a serious impact on the retirement income of individuals who have spent much of their adult lives in service to the Federal Government and the people of the United States. Because private pension plans are not transportable to the Federal retirement system, many CTSP who converted to Federal service lost their eligibility for whatever private pensions they had expected to receive. In addition, these individuals found that they could accrue only the minimum amount of civil service retirement credit after their conversion to Federal service. As a result, their annuities are sharply reduced. Conflicting Federal personnel policies have led to the unfair restriction of the potential retirement income of former CTSP, and I believe that corrective action is necessary.

The legislation I have introduced would permit former CTSP to receive additional civil service credit for the years they spent as CTSP. Only those under contract to the Federal Government before the issuance of the March 4, 1965, decision of the Comptroller General would be covered, and individuals, as well as their jobs, must have been converted to Federal service.

Former CTSP wishing to receive their additional retirement credit would be required to "buy" into the Federal retirement system, paying the amounts they would have paid into the system had they been eligible for Federal retirement annuities in the first place. In order to prevent former CTSP from receiving excessive Federal retirement benefits, those that choose to receive Federal retirement credit based on their CTSP service would not be permitted to receive social security benefits for the same period of service. However, the amounts that these individuals paid into the social security system would be transferred to the Federal retirement fund to reduce the contributions that former CTSP would be obligated to make to receive their additional credit. An agency which used CTSP would have to contribute to the civil service retirement fund an amount equivalent to that paid in by its former CTSP, and an agency's contribution would come from its current budget. Finally, any Federal retirement benefits which former CTSP receive under my legislation would be reduced dollar for dollar by any amounts they receive from private pension plans based on their CTSP service. This last provision is necessary to assure that the legislation provides benefits only to those for whom CTSP service has resulted in hardship and to prevent anyone from receiving more generous retirement benefits than those available to other Federal workers.

There are no firm estimates concerning the cost of my legislation, but since only about 2,000 persons would be directly affected and the legislation contains certain limitations on the benefits permitted, the cost would most likely be very small.

Mr. President, my legislation is not designed to blaze a new trail or to fling open the doors of the civil service retirement fund to multitudes of new annuitants. Rather, it would provide much deserved relief to a group of individuals who gave valuable service to the Federal Government and have been unjustly penalized for doing so.

I ask unanimous consent that the text of this legislation be printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2447

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 8332(b) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (8) thereof;

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and "and"; and

(3) by adding immediately below paragraph (9) the following new paragraph:

"(10) subject to sections 8334(c) and 8339 (i) of this title, service performed by an individual who is hired by a private authority to perform services as a contract technician for the Federal government under a contract between the Federal government and such private authority which provides that the hiring of such individual shall be subject to the approval of the Federal government and the performance of services by such individual shall be under the supervision and control of Federal personnel, if—

(A) such service is in a position which is transferred to the civil service and such individual is appointed to that position or a similar position in the civil service; and

"(B) such contract, if entered into after March 4, 1965, complies with any other provision of law relating to such contract."

(b) Section 8334 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(i)(1) Notwithstanding the provisions of subsection (c), the amount of the deposit which is required from an employee under such subsection (c) for periods of service creditable under section 8332(b)(10) of this title shall be equal to the amount determined under subsection (c) (without regard to this subsection) less any amount which such employee deposited under title II of the Social Security Act for such periods of service.

"(2)(A) The employing agency shall contribute from the appropriation or fund used to pay an employee who deposited amounts under this section for periods of service creditable under section 8332(b)(10) an amount equal to the amount such employee would (but for the provisions of paragraph (1)) have deposited under subsection (c) for such periods.

"(B) The employing agency shall deposit such amount into the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe."

(c) Section 8339 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(n) In computing any annuity under this section with respect to which periods of service creditable under section 8332(b)(10) of this title are included in the total service of an employee or Member, the amount of the annuity shall be reduced by the amount of any retirement benefits such employee or Member is receiving from any source (other than benefits received under title II of the Social Security Act) which are attributable to such periods of service."

(d) Section 2105 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) The performance of services by an individual under the conditions prescribed in section 8332(b)(10) of this title shall be considered the performance of the official duty of an employee."

SEC. 2. (a) In the computation of any benefit or the determination of quarters of coverage under title II of the Social Security Act, no credit shall be allowed for any period of service for which an individual is allowed credit for purposes of the Civil Service Retirement System under section 8332(b)(10) of title 5, United States Code.

(b) The Secretary of the Treasury shall, with respect to any individual who claims credit for periods of service under section 8332(b)(10) of title 5, United States Code, withdraw from the Federal Old-Age and Survivors Insurance Trust Fund any tax imposed on the wages of that individual under sections 3101 and 3111 of the Internal Revenue Code of 1954 for periods of service for which credit under title II of the Social Security Act is disallowed under subsection (a) of this section and the Secretary of the Treasury shall deposit such amount into the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund.

(c) The Secretary of Health, Education and Welfare, the Chairman of the Civil Service Commission and any individual claiming such credit shall supply such records and information to the Secretary of the Treasury as may be necessary to carry out the provisions of this section.

By Mr. METZENBAUM (for himself and Mr. ANDERSON) (by request):

S. 2448. A bill to amend the Emergency Natural Gas Act of 1977 and the Natural Gas Act, as amended, to provide authority to institute emergency measures to minimize the adverse effects of natural gas shortages, and for other purposes; to the Committee on Energy and Natural Resources.

EMERGENCY NATURAL GAS AMENDMENTS OF 1978

Mr. METZENBAUM. Mr. President, on January 6, the General Accounting Office issued a report documenting widespread and massive abuse by interstate pipeline companies of the special natural gas purchasing program enacted during last winter's natural gas emergency. According to the GAO, inadequate administration of the emergency purchase program by the Federal Power Commission permitted many pipeline companies to use high-priced gas purchased under emergency circumstances in intrastate markets to maintain or even to increase sales to low priority customers with capability to convert to alternate fuels.

In addition, these low priority customers received gas at the expense of residential consumers. Instead of charging low priority users directly for the higher priced emergency gas purchased to meet their demand, the pipeline companies averaged the additional costs through their entire systems. Thus, improper diversion of gas to low priority consumers led directly to higher heating bills for American families.

Mr. President, the bill I am introducing today was drafted at my request by the GAO. It is designed to insure that the combination we experienced last winter of regulatory failure by the Federal Government and unscrupulous business practices by the pipeline companies will not again victimize American consumers. I consider the bill an excellent working document from which to develop badly needed reforms in this area.

The bill includes three main provisions.

First, it prohibits the sale of emergency natural gas supplies to low priority industrial users and it establishes stiff penalties for companies that make such sales.

Second, it establishes regulation of the use and price of emergency natural gas supplies at their final destination.

Finally, the bill gives the President permanent authority to reallocate gas from the intrastate market during emergency shortages. The authority granted to the President by the Emergency Natural Gas Act of 1977 to make such allocations has expired.

I believe that this legislation will go far toward protecting our homes, businesses, and schools from needless disruption in the event of future natural gas shortages. It will also prevent any recurrence of the abuses documented by the GAO.

Mr. President, I ask unanimous consent that a section-by-section analysis of the bill and the text of the bill itself be printed in the RECORD.

There being no objection, the bill and summary were ordered to be printed in the RECORD, as follows:

S. 2448

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Natural Gas Amendments of 1978."

FINDINGS AND PURPOSES

SEC. 2(a). The Congress finds that—

(1) large quantities of natural gas have been distributed under emergency provisions, yet no restrictions have been applied in terms of what constitutes an emergency or what priorities should receive natural gas obtained under emergency provisions;

(2) this situation is counterproductive to national conservation policies because low priority customers are encouraged to continue using natural gas rather than switch to alternate fuels;

(3) this situation is inequitable because high priority customers who may not be affected by natural gas curtailments are forced to bear part of the economic burden of the higher cost of natural gas obtained under emergency provisions, thereby subsidizing low priority users; and

(4) regulation of the pricing, transportation, transportation costs, and ultimate end use of natural gas obtained under emergency provisions is needed to assure that consumer inequities and inappropriate uses are prevented.

(b) The purposes of this Act are—

(1) to deal with short-term supply shortages of natural gas through extension of the allocation provisions of the Emergency Natural Gas Act of 1977;

(2) to continue the provisions of the Emergency Natural Gas Act of 1977 and to expand the provisions of the Natural Gas Act, as amended, that have been most useful in dealing with natural gas shortages;

(3) to require Federal regulation of transportation and transportation costs of natural gas obtained under emergency provisions;

(4) to require that the full cost of emergency natural gas is charged to the customers that receive it from all pipelines and distribution companies, including those pipelines and distribution companies otherwise not federally regulated; and

(5) to assure that customers in low priority categories with alternate fuel capabilities do not receive natural gas under emergency provisions.

AMENDMENTS TO THE EMERGENCY NATURAL GAS ACT OF 1977

SEC. 3. The Emergency Natural Gas Act of 1977 is amended—

(1) in section 2, by striking out paragraphs (2), (3), and (4) and inserting in lieu thereof the following:

"(2) The term 'pipeline' means any person engaged in the transportation or distribution of natural gas.";

(2) in section 2, by redesignating paragraphs (5), (6), and (7) as (3), (4), and (5), respectively;

(3) in section 4(a)(1), by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) any pipeline to make emergency deliveries of, or to transport, natural gas to any other pipeline or to any local distribution company for purposes of meeting such requirements; or ';

(4) in section 4(a)(1), by redesignating subparagraph (C) thereof as subparagraph (B);

(5) in section 4(a)(1), by striking out "after April 30, 1977, or" and ", whichever is earlier";

(6) in section 4(a)(2), by striking out "interstate" wherever it appears;

(7) in section 4(d), by striking out "interstate pipeline, intrastate";

(8) in section 4(f), by inserting a new paragraph (1) as follows:

"(1) The transportation and delivery of natural gas required pursuant to an order issued under subsection (a) shall be subject to terms and conditions established by the President (including provisions respecting prices and transportation charges). The President shall establish separate accounting procedures and shall require that separate accounts be maintained for revenues received by pipelines as a result of such emergency transactions.";

(9) in section 4(f), by redesignating the present paragraph (1) as (2) and inserting therein after the word "If": ", within the terms and conditions the President may prescribe,".

(10) in section 4(f), by redesignating the present paragraph (2) as (3), and by striking out "by August 1, 1977, to the maximum extent practicable" and inserting in lieu thereof "as expeditiously as practicable,";

(11) in section 4(f), by striking out "interstate" wherever it appears;

(12) in section 7, by striking out "interstate" wherever it appears, and by striking out "4(f)(2)(B)" and inserting in lieu thereof "4(f)(3)(B)";

(13) in section 9(c), by striking out "and before August 1, 1977"; and

(14) in section 12(b), by striking out "October 1, 1977," and inserting in lieu thereof "90 days after a natural gas emergency declared under section 3 is terminated,".

AMENDMENTS TO THE NATURAL GAS ACT

SEC. 4. The Natural Gas Act, as amended, is further amended—

(1) in section 1(b), by inserting after "but" and before "shall" the following: ", with the exception of the emergency provisions in section 7a,";

(2) In section 1(c), by striking out the first "The" in the subsection and inserting in lieu thereof, "With the exception of the emergency provisions in section 7a, the";

(3) in section 7(c), by inserting after "Provided, however, That" and before "the Commission" the following: "under the provisions of section 7a,";

(4) by adding after section 7 a new section 7a, as follows:

"SEC. 7a. (a) The Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of section 7 temporary acts or operations for which the issuance of a certificate will not be required in the public interest. The authority of the Commission with respect to such emergency exemptions and temporary certificates (and regulations issued pursuant thereto) shall extend to the ultimate end price and end use of natural gas governed by this section, including that natural gas distributed by pipelines not otherwise under Federal regulation. The Commission shall establish separate accounting procedures and shall require that separate accounts be maintained for revenues received by pipelines as a result of such emergency transactions.

"(b) Compliance by any pipeline with any order, certificate, or regulation issued under subsection (a) shall not subject such pipeline or distribution company to regulation under other sections of the Natural Gas Act (15 U.S.C. 717 *et seq.*) or to regulation as a common carrier under any provision of State or Federal law. No action required to be taken under any order, certificate, or regulation issued under subsection (a) shall be subject to any other provision of the Natural Gas Act and any such order, certificate, or regulation shall supersede any provision of any other requirement under the Natural Gas Act which is inconsistent with such order, certificate, or regulation.

"(c)(1) There shall be available as a defense to any action brought for breach of contract under Federal or State law arising out of any act or omission that such act was taken or that such omission occurred for purposes of complying with any order, certificate, or regulation issued under subsection (a).

"(2) Any contractual provision—

"(A) prohibiting the sale or commingling of natural gas subject to such contract with natural gas subject to the provisions of the Natural Gas Act, or

"(B) terminating any obligation under any such contract as a result of such sale or commingling, is hereby declared against public policy and unenforceable with respect to such natural gas if an order, certificate, or regulation under subsection (a) applies to the delivery, transportation, or contract for supplies of such natural gas.

"(3) The amounts and prices of any natural gas purchases pursuant to an order, certificate, or regulation under subsection (a) shall not be taken into account for purposes of any contractual provision which determines the price of any natural gas (or terminates the contract for the sale of natural gas) on the basis of sales of other natural gas.

"(d)(1) Any person who violates any order, certificate, or regulation issued under this section shall be subject to a civil penalty of not more than $25,000 for each violation of such order certificate or regulation. Each day of violation shall constitute a separate offense.

"(2) Any person who willfully violates an order, certificate, or regulation under this section shall be fined not more than $50,000 for each violation of such order, certificate, or regulation. Each day of violation shall constitute a separate violation.

"(3) Whenever it appears to the Commission that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of any order, certificate, or regulation issued under this section, the Commission may request the Attorney General to bring a civil action to enjoin such acts or practices and, upon showing, a temporary restraining order or preliminary or permanent injunction shall be granted without bond. In any such action, the court may also issue mandatory injunctions commanding any person to comply with any such order, certificate, or regulation.

"(e) Any order, certificate, or regulation issued pursuant to this section shall preempt any provision of any program for the allocation, emergency delivery, transportation, or purchase of natural gas established by any State or local government if such program is in conflict with any such order.

"(f) As used in this section, the term 'pipeline' means any person engaged in the transportation or distribution of natural gas."

SUMMARY AND PURPOSE

The amendments in this draft bill revise and extend the emergency provisions in the Emergency Natural Gas Act of 1977 (ENGA) and the Natural Gas Act (NGA). Experience with the emergency provisions under ENGA and the NGA has shown that these provisions should be clarified and strengthened to (1) assure consonance with the national policy for natural gas conservation, (2) eliminate inequities in sharing the higher costs of emergency purchases, (3) continue the availability of the ENGA provisions most useful in meeting shortages of natural gas, (4) assure reasonable transportation charges, and (5) prevent de facto price deregulation.

Accordingly, these amendments eliminate the expiration dates of the inter-pipeline allocation authority (section 4) of ENGA and expand that authority to include allocation (and regulation thereof) from and to intrastate pipelines. The amendments to ENGA also provide for regulation of delivery, transportation, ultimate end use, and prices of natural gas obtained under emergency provisions. To monitor profits from emergency transactions, the amendments require separate accounting for natural gas obtained under emergency provisions.

Similar amendments are made to the NGA. The amendments expand the existing emergency authority of the Federal Energy Regulatory Commission to include regulation of the ultimate price and end use of natural gas obtained under emergency provisions, including natural gas not otherwise under Federal regulation. These amendments also require separate accounting for emergency transactions.

Other amendments to the NGA closely follow existing authority in ENGA. The amendments provide that emergency requirements supersede other inconsistent requirements and that compliance with emergency requirements shall not subject a pipeline or distribution company to other laws or regulations. The amendments also protect those who comply with emergency provisions from adverse effects regarding conflicting contractual responsibilities. Penalties are provided for violation of emergency requirements and provision is made for emergency requirements to preempt conflicting State or local requirements.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. The amendments are entitled the "Emergency Natural Gas Amendments of 1978".

Sec. 2. Findings and Purposes. This section summarizes the need for extension and clarification of the regulation of pricing, transportation, transportation costs, and ultimate end use of natural gas obtained under emergency provisions. It explains the purpose of the bill to continue and expand the provisions of the Emergency Natural Gas Act of 1977 and the Natural Gas Act, as amended, that have been most useful in dealing with natural gas shortages.

Sec. 3. Amendments to the Emergency Natural Gas Act of 1977. The regulatory authority of the President over natural gas obtained under emergency provisions is expanded to intrastate natural gas by redefining the term "pipeline" to include both intra and interstate natural gas pipelines and distribution companies. To extend the allocation provisions of the Act, the expiration dates in section 4 are eliminated. Similarly, the reporting provisions in section 12 are extended. New provisions are added to clarify and emphasize regulatory authority over delivery, transportation, transportation charges, ultimate end use, and prices of natural gas obtained under emergency provisions, and separate accounting is required for such emergency natural gas.

Sec. 4. Amendments to the Natural Gas Act, as amended. These amendments expand the Federal Energy Regulatory Commission's existing emergency authority to include regulation of intrastate natural gas. Sections 1(b) and 1(c) of the Act are amended accordingly. Section 7(c) is amended to recognize the emergency provisions in the new section 7a.

A new section 7a is added to give the Commission emergency powers over intra and interstate natural gas similar to those powers granted the President in ENGA. Section 7a (a) extends the Commission's existing emergency authority to include intrastate natural gas. It also requires separate accounting for emergency transactions.

Sections 7a(b) through 7a(e) closely follow existing authority in ENGA. Section 7a (b) is virtually identical to section 4(b) of ENGA, providing that emergency requirements shall supersede other inconsistent requirements and that compliance with emergency requirements shall not subject a pipeline or distribution company to other laws or regulations. Section 7a(c) is similar to section 9 of ENGA and is designed to protect those who comply with emergency provisions from adverse effects regarding conflicting contractual responsibilities. Section 7a(d) provides penalties for violations of emergency requirements and closely follows section 11 of ENGA. Section 7a(e) makes provision for emergency requirements to preempt conflicting State or local requirements, as does section 14 of ENGA. Section 7a(f) contains definitions of the term "pipeline" that reflect extension of the Commission's authority under this section to intrastate natural gas.

By Mr. HOLLINGS (for himself and Mr. THURMOND):

S. 2449. A bill to provide in cooperation with the States benefits to individuals who are totally disabled due to employment-related brown lung disease and to the surviving dependents of individuals whose death was due to such disease or who were totally disabled by such disease at the time of their death; to the Committee on Human Resources.

BROWN LUNG DISEASE ACT OF 1978

Mr. HOLLINGS. Mr. President, today I, along with my colleague from South Carolina, have introduced legislation to provide compensation benefits for textile workers, active and retired, who have become totally disabled due to brown lung disease. Brown lung, or byssinosis, is a disease of the lungs which afflicts textile workers exposed to cotton dust over a period of years. The disease begins with a simple irritation of the bronchial airways and develops with time into a cough, chest tightness, shortness of breath and finally into a chronic disabling condition similar to emphysema or chronic bronchitis.

It is with some sadness that I introduce this legislation, for it points up the conspiracy of neglect which has victimized textile workers for decades. It is a conspiracy contributed to by industry, elected officials, and the medical community. It has been more than 200 years since byssinosis was first recognized in foreign countries as a disease associated with textile manufacturing. And in Great Britain it has been a compensable occupational disease since 1942. But until just a short time ago few people in the United States recognized the existence of the disease or the serious problem it constituted within the textile industry. However, recent medical evidence, derived from studies on American textile workers, indicates there may be as many as 35,000 active and retired textile workers suffering from brown lung.

Last month, I chaired congressional hearings in Greenville, S.C. on the problem of brown lung compensation. A comprehensive record was compiled which proved to me the only way adequate compensation will be awarded to these victims is through Federal legislation. The South Carolina State compensation law is a complex network of obstacles to brown lung benefits. At this time, no victim of byssinosis has ever received a compensation award. Other State laws have proven equally inadequate.

For many victims of byssinosis time is running out. There are thousands of retired individuals who have worked 30, 40, and 50 years in textile mills who today are physically and financially crippled because of brown lung disease. In many instances they are living without a retirement pension, without adequate social security, and without the breath to walk up a flight of stairs. It is primarily for these individuals that I urge the Senate to give prompt and favorable consideration to the legislation.

Listed below are the major provisions of the Brown Lung Disease Act:

PROVISIONS OF BROWN LUNG DISEASE ACT

1. Level of Benefits.—Compensation benefits are calculated at one-half the rate of compensation received by a federal worker, GS 2 level, who is totally disabled. If the law were in effect today, compensation rates would be as listed below:

	Per month
No dependents	$219.80
One dependent	$329.80
Two dependents	$384.80
Three or more	$439.80

Any compensation received under state law would be subtracted from the federal compensation.

2. Liability.—Benefit payments are paid by the federal government and by responsible employers. Eligible workers who have retired before January 1, 1979 will receive benefits paid for by the federal government. Benefits for those retiring on or after January 1, 1979 will be paid by the owner or owners who employed the brown lung victim.

3. Medical Presumptions.—The legislation authorizes the Secretary of Labor to establish and use medical presumptions in determining whether a worker is totally disabled due to brown lung disease and whether the disease was caused by the worker's employment in a textile plant.

4. Total Disability.—A worker is considered to be totally disabled when it is medically determined that byssinosis prevents the individual from performing work comparable to that which he or she performed while employed in the textile industry.

5. Time Limitations.—To be eligible for a claim, a worker must file within three years of a medical determination of byssinosis. A claim for benefits by an eligible survivor must be filed within three years of the enactment of this Act or three years after the date of death, whichever is later.

6. Job Protection.—No employer may discharge or in any other way discriminate against a worker because he or she is suffering from byssinosis or has filed a claim for brown lung compensation benefits.

Mr. THURMOND. Mr. President, the Hollings-Thurmond brown lung benefits bill should provide long-awaited relief to thousands of workers permanently disabled by byssinosis, more commonly known as brown lung.

Byssinosis, is a respiratory disease associated with years of breathing cotton dust. After prolonged exposure, particularly to high concentrations of cotton trash dust, a worker develops a chronic cough and permanent constrictions of the bronchial tubes. In its later stages byssinosis resembles emphysema and chronic bronchitis. Total disability and even death may result.

Only in the last decade have we in the United States begun to recognize byssinosis as a major health problem in the textile industry. Byssinosis, however, was recognized over 200 years ago as a disease associated with textile manufacture. In the 1930's British researchers pinpointed the disease, and in 1940, the British Government made byssinosis victims eligible for worker's compensation. In the early 1960's clinical specialists and several textile industry representatives began studies of brown lung and its relation to the American textile industry. Through extensive research we are now aware of a substantial correlation between cotton dust exposure and brown lung disease. It is estimated that 250,000–300,000 textile workers are significantly exposed to cotton dust in the primary textile industry. It has been suggested that in South Carolina alone, there are approximately 15,000–20,000 active or retired textile workers suffering from brown lung.

In December 1977, Senator HOLLINGS as chairman of the Senate Subcommittee on Labor Appropriations, chaired hearings in Greenville, S.C., on the subject of brown lung. As one who joined in those hearings, I became more fully aware of the severity of the byssinosis problem and the inadequacy of relief for its victims.

The textile industry is in the process of improving its medical surveillance programs so that employees and prospective employees may be tested for their reaction to cotton dust. Those who evidence respiratory problems or the likelihood of developing byssinosis can be excluded from particular dusty areas of the plant. The textile industry is also working to substantially reduce the number of byssinosis victims by reducing the level of cotton dust to feasible and protective levels. However, the only significant remedy for workers already afflicted with brown lung is adequate compensation. Several years ago, Congress initiated a compensation program for miners who suffered from black lung. The legislation which we are introducing should provide similar relief for the victims of byssinosis. It is my hope that the Federal Government, State government, through workers compensation, and the textile industry can work hand in hand to better assist those persons suffering from brown lung.

By Mr. KENNEDY (for himself, Mr. SCHWEIKER, Mr. WILLIAMS, and Mr. JAVITS):

S. 2450. A bill to extend the assistance programs for community mental health centers and for biomedical research, and for other purposes; to the Committee on Human Resources.

BIOMEDICAL RESEARCH AND COMMUNITY MENTAL HEALTH SERVICES ACT OF 1978

Mr. KENNEDY. Mr. President, I am today introducing on behalf of myself and Senators SCHWEIKER, WILLIAMS, and JAVITS, the Biomedical Research and Mental Health Services Extension Act of 1978. This bill will extend, without major substantive revisions, the Community Mental Health Centers Act and a variety of biomedical research authorities, including the National Cancer Act; the National Heart, Lung, and Blood Diseases Act; the Medical Library Assistance Act; and the National Research Service Award. I would like to explain the rationale behind this proposal, first in the case of mental health services, and then for the biomedical research authorities.

The Community Mental Health Centers Act has, in its current form, been in effect for 3 years. During this period advantages and disadvantages in the legislation have surfaced, and I believe strongly that a thorough, thoughtful review of the program and its legislation is warranted. As chairman of the Subcommittee on Health and Scientific Research, I intend to undertake such a review. Our legislative oversight will be assisted by the upcoming report of the President's Commission on Mental Health, and I will consider their recommendations with great care.

In order to provide time for that assessment, while continuing the overall goal of providing comprehensive mental health services to all in need, the bill I am introducing provides for a 1-year extension of funding support of the Com-

munity Mental Health Centers Act with appropriate technical amendments that will insure the operating continuity of the program—a program, initiated under President Kennedy's leadership to provide comprehensive mental health services to the American people.

We have made great progress since CMHC's were first conceived in 1963 as a community out-patient alternative to State in-patient mental health care. Since enactment of Public Law 94–63, 53 planning grants have been awarded. These grants are an important and necessary first step in developing local initiative for developing community based mental health services. As of September 30, 1977, 675 Community Health Mental Centers have been funded with 592 now providing mental health assistance to 44 percent of the Nation's population. In 1977, an estimated 2,900,000 people were seen by the centers.

The mental health centers philosophy has been and continues to be the provision of mental health services in the least restrictive and most appropriate setting. Thus, the emphasis is on programs designed to help maintain the individual's dignity and to assure that individuals, whenever possible, remain a functioning and contributing part of the community. The existing CMHC Act has strengthened the expectation that citizens, through a representative governance structure, will manage and provide direction for each center. Another strength of the act is the requirement that each CMHC develop and maintain a program designed to assess the quality, efficiency, and effectiveness of services provided. This should contribute significantly to sound program design, management and cost consciousness.

The complexities of the CMHC Act has created some problems for those administering the program at the local, regional and national levels. For example, the current act authorizes six different grant mechanisms, each potentially providing some form of financial assistance to a center. Additionally, the many service requirements of the act, which must now be met within a relatively short time frame, often impose a hardship for centers. The act provides for the recognition of the special needs of areas designated as impoverished; however, the very complicated and restrictive set of requirements for designating poverty areas has had some detrimental results. In our thoughtful review of this legislation, I intend to carefully address each of these issues.

There has been some confusion on the conceptual mix of required and target groups as spelled out in the legislation. The act calls for in-patient, 24-hour emergency care, partial hospitalization, consultation-education, and, in the same section, requires specialized services for children, the elderly, alcoholics and alcohol abusers. The board scope and emphasis of the act may need to be clarified and narrowed.

Concurrently, the President's Commission on Mental Health has been reviewing and assessing the accomplishments of the community mental health center program. The Government Accounting Office is also studying the CMHC's. The Commission has held public hearings and reviewed the preliminary work of the Task Panel on Assessment of the Community Mental Health Centers. At present, the Commission is bringing together the work of many individuals for a final report to be submitted to President Carter on the first of April. The congressional deadline of May 15 for the reporting of authorizing legislation would allow too little time for the Congress to thoughtfully and thoroughly review and study the Commission's recommendations and include them in legislation. Thus, the 1-year extension I propose will allow the Congress, the President and the Department of Health, Education and Welfare a greater opportunity to review the work of the Commission and at the same time insure an additional year of operation of the community mental health centers program.

However, as I indicated earlier, a number of administrative and technical difficulties that have worked to the disadvantage of the program can and should be addressed in the simple 1-year extension. They are:

First, a provision to allow both free-standing part F and staffing grantees 4 years instead of 3 to phase in the various services required by section 201(b)(1) and to allow part F grantees (only) 4 years to meet the other requirements of section 201;

Second, a provision to allow a grantee to carry over unexpended grant funds to the next fiscal year;

Third, a provision to permit the explicit recovery of construction award funds which are now being utilized illegally.

While the 1-year extension may continue some of the complexities of the Community Mental Health Centers Act, it will have the important advantage of not changing the law for only a brief period and thus assure that Department of Health, Education, and Welfare officials and staff, applicants, and grantees will remain familiar with the program, and the administration and support of the program will not be disrupted.

I am committed to the concept of community based mental health centers, and when we undertake the review of this program, I will be looking to ways that the program can be strengthened and simultaneously better integrated into the mainstream of the health care system.

Let me turn now, Mr. President, to the biomedical research authorities. During the past year and a half, the Subcommittee on Health and Scientific Research has inquired extensively into basic issues relating to biomedical research, with particular emphasis on the responsiveness of the NIH to major national research needs. The findings of these hearings have been illuminating and provocative. We have learned, for example, that the areas of environmental health and disease prevention are among the most critical facing our national research effort. We have also come to see that the so-called disease-of-the-month approach to national health problems is perhaps not the most productive. These and many issues, however, remain to be explored in much greater depth before it would be appropriate for the Congress to undertake any major alterations in NIH's legislative authorities.

There are, however, certain NIH authorities with time and dollar limits that must be extended if the programs are to continue in fiscal year 1979. In addition, there are a variety of technical and perfecting amendments to the NIH statute that could be made without precluding more basic revisions in the future.

This bill would extend for 1 year—fiscal year 1979—the appropriations authorizations for the National Cancer Institute (NCI) and the National Heart, Lung, and Blood Institute (NHLBI). These two institutes comprise approximately half the total NIH budget.

In order to permit the subcommittee and the Senate to have adequate opportunity for full review of those programs, I am proposing that they be extended for a single year with no major amendments. Authorization levels proposed in the bill are as follows: to the NCI, $85 million for control programs and $925 million for research programs, amounting to a total of $1,010 million. For the NHLBI, the figures for prevention, education and control are $40 million, and for the remainder of the program $470 million, giving a total of $510 million.

The act recommends only one substantive change in the Cancer Act. It proposes amending section 408(b) of the Public Health Service Act to authorize support of "basic" as well as "clinical" research in national cancer research and development centers. These centers currently receive support for a variety of basic and clinical research activities, but under current laws, the cancer centers cannot use "core" grant moneys for the purpose of basic research. The National Heart, Lung, and Blood Act contains no such artificial restriction on the uses to which "core" grant moneys may be put, and this seems a more desirable situation. It is often extremely difficult to make a distinction between "basic" and "clinical" research, and it would seem desirable that researchers have the freedom to move across such artificial boundaries.

The bill also includes one technical amendment relating to the authority of those two institutes to employ experts and consultants without regard to personnel ceilings and without regard to the normal limitation of 12 months on consultant service. As originally drafted in 1971 and 1972, respectively, the Cancer and Heart Acts provided hiring authority for such consultants but did not specify the terms and conditions for paying expenses relating to their move to their post of duty and return from their post of duty. In the absence of any specific legislation, it has been necessary to treat such experts and consultants as "shortage category employees." The effect of this is that the Government may pay for their travel to their post of duty, but upon their departure—which may be anywhere from 1 to 4 years later—may not underwrite any travel or relocation expenses.

It seems to me that the present arrangement tends to discourage recruitment of the very people the legislation was designed to attract to Government service for short periods of time. Therefore, the act includes provisions to apply to these experts and consultants the provisions of the Intergovernmental Personnel Act, relating to similar exchanges between Government and the private sector.

Another major expiring authority is the National Research Service Award (NRSA) Act, the authority for research training conducted by NIH, the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), and the Division of Nursing, Health Resources Administration (HRA). Conversations with the scientific community and program administrators have convinced me that it would be desirable to extend this particular authority for a 3-year period. One of the major problems in the research field has been the instability of Government support resulting from executive and congressional inconsistency in handling these programs. In order to provide some assurance to the scientific community that these programs will continue for the near future, I am proposing a 3-year extension.

A major difficulty in the research training program has arisen from a recent interpretation by the Internal Revenue Service that amounts paid to students under the NRSA Act are not scholarships within the meaning of the Internal Revenue Code because there is a service payback required. This has been interpreted as representing an exchange of services rather than a scholarship or gift relationship between Government and the NRSA recipient. At present stipend levels, it would be impossible for many NRSA recipients to pay taxes on the full amount of the awards and have enough remaining to survive economically. It is my hope that the Finance Committee will consider the plight of NRSA recipients as they review current amendments to the tax laws, and my subcommittee would be pleased to provide the Finance Committee with whatever information would be useful to them in consideration of this issue.

I am proposing two significant amendments to the service payback requirements of the National Research Service Award Act. You will recall that in 1974, when this legislation was enacted, it was the strong sense of the Congress that recipients of Federal support for research training should be required to pursue careers in research or teaching, if possible, or alternatively to engage in service or other health-related activities that would utilize their Government-financed training for the public benefit. It is still my sense that the concept of a service payback is reasonable and necessary.

However, it has come to my attention that the legislation, as originally drafted, is cumbersome and in certain cases excessively harsh. The present formula for computing monetary payback, in the event that service payback is not fulfilled, is drafted in such a way that the person who partially fulfills the service requirement is severely penalized and does not receive proportional credit for service actually performed. Our legislation would change the payback formula so that proportional credit would be given for partial service.

Second, the present statute, while it makes provision for alternative forms of service if research or teaching positions are not available, also imposes a penalty on those who satisfy their service requirement through such alternative forms of service, even though the choice may not be their own. The present statute provides that persons in research or teaching positions will serve 1 month for every month of support, or 12 months for every 12 months of support. However, those who must serve in a health-related activity because no research or teaching positions are available must serve 20 months for every 12 months of support received. It is my view that this arrangement is needlessly punitive, and this bill would amend that provision to provide a straight one-for-one service requirement for all NRSA recipients.

We are suggesting two additional amendments to the National Research Service Awards. First, we are proposing a deletion of the provision which permits award recipients to fulfill their service requirement under the act by entering private practice in their specialty in an area designated by the Secretary as underrepresented in that specialty. The provision has never been used by any award recipients, and the Secretary has never defined or designated areas which are underrepresented for a given specialty.

Second, we are adding cost-of-living allowances as one of the considerations which the Secretary should take into account in setting stipend levels for Research Service Awards. These levels have not been adjusted upward since 1974, and remain at levels of $3,900 for predoctoral awards, and an average of $12,000 for postdoctoral awards. There are numerous technical questions involved in determining an appropriate upward adjustment for cost of living, and we await advice from the Department on the level and rate at which these adjustments should be made. However, it is my feeling that an equitable and reasonable increase in stipends is long overdue, and that future awards should take cost of living into account. In order to provide flexibility for providing these increases, we are increasing authorizations for appropriations under the NSRA in the following manner: Fiscal year 1979, $175 million; fiscal year 1980, $180 million; fiscal year 1981, $185 million.

Our extension bill would also extend expiring authorities of the Medical Library Assistance Act. Programs administered by the National Library of Medicine (NLM) under this authority include resource improvement grants, research projects grants, training grants, research and demonstration grants, special scientific project grants, publication grants, and contracts to regional medical libraries. I have included a 3-year extension of this authority at the levels of $15 million for 1979, $17 million for 1980, and $20 million for 1981. I think it would be beneficial to the program to have the assurance of a 3-year extension, and any major changes in the mission of the NLM would probably be in the nature of activities to be added to, rather than replacing, the aforementioned programs.

However, I wish to make it very clear that the subcommittee's review of the NIH mission will include extensive consideration of the question of transfer of knowledge from science to the health care process. Any major new initiatives resulting from this review may very well entail some restructuring of the mission of the Library and its role within NIH.

I am also including an amendment to make the members of the Board of Regents of the NLM appointees of the Secretary of Health, Education, and Welfare (HEW), rather than the President. While I appreciate the intent of the original legislation to confer upon this body the prestige of a Presidential appointment, it should be noted that there have been no new appointments to the Board in 4 years, that the term of the last regent expired in 1977, and that nominations for the Board have been pending in the White House since last March. Insofar as the NLM is a component of HEW, there seems to be no reason to incur the delays that result from having the Board of Regents appointed by the President.

Our proposed legislation includes other amendments to NIH authorities, not related specifically to the expiring authorizations. These have been included because they are essentially noncontroversial in nature or because they are not necessarily related to the more basic issues that will be considered in next year's revisions of NIH authorities. First, we would repeal the provision in section 439(g) of the Public Health Service (PHS) Act, requiring that not less than 20 percent of funds appropriated each year for multipurpose arthritis centers shall be used for the purpose of establishing new centers. While the original intent of this provision—to encourage support for new as well as established arthritis centers—was a laudable one the 20-percent earmark in effect would eventually preclude support of any established centers, including those established recently under the centers authority. In my view, the intent of Congress that the National Institute of Arthritis, Metabolism, and Digestive Diseases (NIAMDD) should give appropriate consideration to new as well as established centers has been adequately expressed, and this potentially troublesome provision should be eliminated.

This bill includes a proposed amendment to section 301 of the PHS Act, authorizing the Secretary to make available to recipients of grants and contracts under that act and to other individuals or institutions, as deemed appropriate, research chemicals or animals which are not readily available and which must be produced or maintained on a centralized or standardized basis in order to achieve the purpose of research. The PHS Act presently provides the NIH with authority to make available certain research materials, such as biological products, to investigators. It does not specifically

authorize provision of animals or chemicals for purposes not specifically enumerated in the act, except to contractors for intramural research personnel. It has come to my attention that recent occupational safety and health requirements have made it economically unproductive for industry to produce the small quantities of chemicals required for certain research, particulary in the field of carcinogenesis. Similarly, certain breeding requirements for animal colonies are so specialized that there is no incentive to produce these animals in the private sector. My amendment would permit NIH to make available to grantees contractors and intramural research chemicals and animals in cases where NIH would be the most appropriate source for such materials.

The Subcommittee on Health and Scientific Research will conduct a hearing on the Extension Act and any other related legislation on February 8, 1978.

I ask unanamious consent that the Biomedical Research and Community Mental Health Centers Extension Act of 1978 be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—COMMUNITY MENTAL HEALTH CENTERS EXTENSION

SEC. 101. (a) This title may be cited as the "Community Mental Health Centers Extension Act of 1978".

(b) Whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963.

SEC. 102. (a) Section 202(d) is amended by (1) striking "and" after "1977,", and (2) inserting after "1978" the following: ", and $1,930,000 for the fiscal year ending September 30, 1979".

(b) Section 203(d)(1) is amended by (1) striking "and" after "1977,", and (2) inserting after "1978" the following: ", and $38,890,000 for the fiscal year ending September 30, 1979".

(c) Section 203(d)(2) is amended by (1) striking "1978" and inserting in lieu thereof "1979" and (2) striking "or the next two fiscal years" and inserting in lieu thereof "or the next three fiscal years".

(d) Section 204(c) is amended by (1) striking "and" after "1977,", and (2) inserting after "1978" the following: ", and $15,000,000 for the fiscal year ending September 30, 1979".

(e) Section 205(c) is amended by (1) striking "and" after "1977,", and inserting after "1978" the following: ", and $23,000,000 for the fiscal year ending September 30, 1979".

(f) Section 213 is amended by (1) striking "and" after "1977,", and inserting after "1978" the following: ", and $13,500,000 for the fiscal year ending September 30, 1979".

(g) Section 228 is amended by (1) striking "and" after "1977,", and (2) inserting after "1978" the following: ", and $2,500,000 for the fiscal year ending September 30, 1979".

(h) Section 231(d) is amended by (1) striking "and" after "1977,", and (2) inserting after "1978" the following: ", and $7,880,000 for the fiscal year ending September 30, 1979".

SEC. 103. (a) Section 203(e)(1)(A)(i) is amended by striking "three grants" and inserting in lieu thereof "four grants".

(b) Section 206(c) is amended by adding the following paragraph at the end thereof:

"(7) If a grant made under this part is renewed, unexpended funds may be carried forward to the subsequent grant period without being deducted from the subsequent grant award.".

(c) Section 225 is amended by inserting after "under this part" the following: "or part A of this title as in effect before enactment of the Community Mental Health Centers Amendments of 1975".

TITLE II—BIOMEDICAL RESEARCH EXTENSION

SEC. 201. (a) This title may be cited as the "Biomedical Research Extension Act of 1978".

(b) Whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 202. Section 301(b) is amended by inserting ", research chemicals, and research animals" after "Service".

SEC. 203. (a) The first sentence of section 383(a) is amended by striking "the President, by and with the advice and consent of the Senate" and inserting in lieu thereof "the Secretary".

(b) Section 390(c) is amended by (1) striking "and" after "1976", and (2) inserting after "1978" the following: ", $15,000,000 for the fiscal year ending September 30, 1979, $17,000,000 for the fiscal year ending September 30, 1980, and $20,000,000 for the fiscal year ending September 30, 1981".

SEC. 204. (a) Section 408(a) is amended by inserting "basic or" before "clinical research".

(b) The first sentence of section 408(b) is amended by inserting "basic or" before "clinical research".

SEC 205. (a) Section 409(b) is amended by (1) striking "and" after "1977," and (2) inserting after "1978" the following: ", and $85,000,000 for the fiscal year ending September 30, 1979".

(b) Section 410C is amended by (1) striking "and" after "1977;" and (2) inserting after "1978" the following: "; and $925,000,000 for the fiscal year ending September 30, 1979".

SEC. 206. (a) Section 410(a)(1) is amended by inserting after "qualifications" the following: ". Such experts or consultants shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location in accordance with 5 U.S.C. 5724, 5 U.S.C. 5724a(a)(1), 5 U.S.C. 5724a(a)(3), and 5 U.S.C. 5726(c)".

(b) Section 413(c)(1) is amended by inserting after "qualifications" the following: ". Such experts or consultants shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location in accordance with 5 U.S.C. 5724, 5 U.S.C. 5724a(a)(1), 5 U.S.C. 5724a(a)(3), and 5 U.S.C. 5726(c)".

SEC. 207. (a) Section 414(b) is amended by (1) striking "and" after "1977", and (2) inserting after "1978" the following: ", and $40,000,000 for the fiscal year ending September 30, 1979".

(b) Section 419B is amended by (1) striking "and" after "1977," and (2) inserting after "1978" the following: ", and $470,000,000 for the fiscal year ending September 30, 1979".

SEC. 208. The last sentence of section 439(g) is deleted in its entirety.

SEC. 209. (a) Section 472(b)(5) is amended by inserting "and cost of living increase allowances" after "dependency allowances".

(b) Section 472(c)(1)(B) is amended by (1) inserting "or" after "Corps." in clause (i), (2) striking clause (ii) in its entirety and (3) redesignating clause (iii) as clause (ii).

(c) Section 472(c)(2)(B) is amended by striking "twenty months" and inserting in lieu thereof "twelve months".

(d) Section 472(c)(4)(A) is amended by striking

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and inserting in lieu thereof

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(e) Section 472(d) is amended by (1) striking "and" after "1977" and (2) inserting after "1978" the following: ", $175,000,000 for the fiscal year ending September 30, 1979, $180,000,000 for the fiscal year ending September 30, 1980, and $185,000,000 for the fiscal year ending September 30, 1981".

ADDITIONAL COSPONSORS

S. 1954

At the request of Mr. CURTIS, the Senator from Oklahoma (Mr. BELLMON) was added as a cosponsor of S. 1954, a bill to repeal the estate tax carryover basis provisions of the Tax Reform Act of 1976.

S. 2360

At the request of Mr. MOYNIHAN, the Senator from Arkansas (Mr. BUMPERS) was added as a cosponsor of S. 2360, a bill to authorize an appropriation to reimburse certain expenditures for social services provided by the States prior to October 1, 1975, under titles I, IV, VI, X, XIV, and XVI of the Social Security Act.

SENATE RESOLUTION 367—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES

Mr. JACKSON, from the Committee on Energy and Natural Resources, reported the following original resolution, which was referred to the Committee on Rules and Administration:

S. RES. 367

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Energy and Natural Resources is authorized from March 1, 1978, through February 28, 1979, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $1,235,500, of which amount not to exceed $50,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1979.

SEC. 4. Expenses of the committee under this resolution shall be paid from the con-

tingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

SENATE RESOLUTION 368—AN ORIGINAL RESOLUTION REPORTED AUTHORIZING EXPENDITURES

Mr. ABOUREZK, from the Select Committee on Indian Affairs, reported the following original resolution, which was referred to the Committee on Rules and Administration:

S. RES. 368

Resolved, That in carrying out the duties and functions imposed on it by section 105 of Senate Resolution 4, Ninety-fifth Congress, agreed to February 4 (legislative day, February 1), 1977, and in exercising the authority conferred on it by such section, the Select Committee on Indian Affairs is authorized from March 1, 1978, through the close of the 95th Congress to expend not to exceed $575,410 from the contingent fund of the Senate, of which amount not to exceed $12,000 may be expended for the procurement of the services of individual consultants or organizations thereof (as authorized by section 202 (i) of the Legislative Reorganization Act of 1946, as amended).

SEC. 2. Expenses of the select committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the select committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

SENATE RESOLUTION—SUBMISSION OF A RESOLUTION TO ESTABLISH A SELECT COMMITTEE ON THE REMOVAL OF DAVID W. MARSTON

Mr. SCHWEIKER (for himself and Mr. BAKER) submitted the following resolution, which was referred to the Committee on the Judiciary:

S. RES. 369

Resolved, Section 1. (a) There is hereby established a select committee of the Senate, which may be called, for convenience of expression, the Select Committee on the Removal of David W. Marston, to conduct an investigation and study of the extent, if any, to which illegal, improper, or unethical activities were engaged in by any person, acting either individually or in combination with others, in the termination of David W. Marston's tenure as United States Attorney for the Eastern District of Pennsylvania, including activities prior to Mr. Marston's termination to effect or expedite, or assist in effecting or expediting, the removal of Mr. Marston, and to determine whether in its judgment any occurrences which may be revealed by the investigation and study indicate the necessity or desirability of the enactment of new legislation to protect from improper influences the operations of the Department of Justice and the process where by United States Attorneys are selected or removed.

(b) The select committee established by this resolution shall consist of seven Members of the Senate, four of whom shall be appointed by the President of the Senate from the majority Members of the Senate upon the recommendation of the majority leader of the Senate, and three of whom shall be appointed by the President of the Senate from the minority Members of the Senate upon the recommendation of the minority leader of the Senate. For the purposes of paragraph 6 of rule XXV of the Standing Rules of the Senate, service of a Senator as a member or chairman of the select committee shall not be taken into account.

(c) The select committee shall select a chairman from the majority members of the committee and vice chairman from the minority members of the committee, and adopt rules of procedure to govern its proceedings. The vice chairman shall preside over meetings of the select committee during the absence of the chairman, and discharge such other responsibilities as may be assigned to him by the select committee or the chairman. Vacancies in the membership of the select committee shall not affect the authority of the remaining members to execute the functions of the select committee and shall be filled in the same manner as original appointments to it are made.

(d) A majority of the members of the select committee shall constitute a quorum for the transaction of business, but the select committee may fix a lesser number as a quorum for the purpose of taking testimony or depositions.

SEC. 2. The select committee is authorized and directed to do everything necessary or appropriate to make the investigation and study specified in subsection (a) of the first section of this resolution.

SEC. 3. (a) To enable the select committee to make the investigation and study authorized and directed by this resolution, the Senate hereby empowers the select committee as an agency of the Senate (1) to employ and fix the compensation of such clerical, investigatory, legal, technical, and other assistants as it deems necessary or appropriate; (2) to sit and act at any time or place during sessions, recesses, and adjournment periods of the Senate; (3) to hold hearings for taking testimony on oath or to receive documentary or physical evidence relating to the matters and questions it is authorized to investigate or study; (4) to require by subpena or otherwise the attendance as witnesses of any persons who the select committee believes have knowledge or information concerning any of the matters or questions it is authorized to investigate and study; (5) to require by subpena or order any department, agency, officer, or employee of the executive branch of the United States Government, or any private person, firm, corporation, committee, organization, or other entity, or any officer or former officer or employee thereof, to produce for its consideration or for use as evidence in its investigation and study any books, checks, canceled checks, correspondence, communications, document, papers, physical evidence, records, recordings, tapes, or materials relating to any of the matters or questions it is authorized to investigate and study which they or any of them may have in their custody or under their control; (6) to make to the Senate any recommendations it deems appropriate in respect to the willful failure or refusal of any person to appear before it in obedience to a subpena or order, or in respect to the willful failure or refusal of any person to answer questions or give testimony in his character as a witness during his appearance before it, or in respect to the willful failure or refusal of any officer or employee of the executive branch of the United States Government or any person, firm, corporation, committee, organization, or other entity, or any officer or former officer or employee thereof, to produce before the committee any books, checks, canceled checks, correspondence, communications, document, financial records, papers, physical evidence, records, recordings, tapes or materials in obedience to any subpena or order; (7) to take depositions and other testimony on oath anywhere within the United States or in any other country; (8) to procure the temporary or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946; (9) to use on a reimbursable basis, with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, the services of personnel of any such department or agency; (10) to use on a reimbursable basis or otherwise with the prior consent of the chairman of any other of the Senate committees or the chairman of any subcommittee or any committee of the Senate the facilities or services of any members of the staffs of such other Senate committees or any subcommittees of such other Senate committees whenever the select committee or its chairman deems that such action is necessary or appropriate to enable the select committee to make the investigation and study authorized and directed by this resolution; (11) to have access through the agency of any members of the select committee, chief majority counsel, minority counsel, or any of its investigatory assistants jointly designated by the chairman and the ranking minority member to any data, evidence, information, report, analysis, or document or papers relating to any of the matters or questions which it is authorized and directed to investigate and study in the custody or under the control of any department, agency, officer, or employee of the executive branch of the United States Government having the power under the laws of the United States to investigate any alleged criminal activities or to prosecute persons charged with crimes against the United States which will aid the select committee to prepare for or conduct the investigation and study authorized and directed by this resolution; and (12) to expend to the extent it determines necessary or appropriate any moneys made available to it by the Senate to perform the duties and exercise the powers conferred upon it by this resolution and to make the investigation and study it is authorized by this resolution to make.

(b) Subpenas may be issued by the select committee acting through the chairman or vice-chairman or any other member designated by the chairman, and may be served by any person designated by such chairman, vice-chairman, or other member anywhere within the borders of the United States. The chairman of the select committee, or any other member thereof, is hereby authorized to administer oaths to any witnesses appearing before the committee.

(c) In preparing for or conducting the investigation and study authorized and directed by this resolution, the select committee shall be empowered to exercise the powers conferred upon committees of the Senate by section 6002 of title 18 of the United States Code or any other Act of Congress regulating the granting of immunity to witnesses.

SEC. 4. The select committee shall have authority to recommend the enactment of any new legislation which it considers necessary or desirable to protect from improper influence the operations of the Department of Justice and the process whereby United States Attorneys are selected or removed.

SEC. 5. The select committee shall make a final report of the results of the investigation and study conducted by it pursuant to this resolution, together with its findings and its recommendations as to new congressional legislation it deems necessary or desirable, to the Senate at the earliest practicable date, but no later than August 1, 1978. The select committee may also submit to the Senate such interim reports as it considers appropriate. After submission of its final report, the select committee shall have three calendar months to close its affairs, and on the expiration of such three calendar months shall cease to exist.

SEC. 6. The expenses of the select commit-

tee under this resolution shall not exceed $350,000, of which amount not to exceed $25,000 shall be available for the procurement of the services of individual consultants or organizations thereof. Such expenses shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the select committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate. The minority members of the select committee shall have one-third of the professional staff of the select committee (including a minority counsel) and such part of the clerical staff as may be adequate.

Mr. SCHWEIKER. Mr. President, I am submitting today a resolution calling for the establishment of a Senate Select Committee on the Removal of David W. Marston. I am pleased to be joined in this proposal by the distinguished minority leader (Mr. BAKER).

The circumstances surrounding the forced resignation of David Marston as U.S. attorney for the eastern district of Pennsylvania have shaken the confidence of the American people in our system of criminal justice. This matter has been characterized by the administration as involving only who won the last election, but in fact it is much more serious. In the years that I have served in the U.S. Senate, I have never seen anything so deeply affect the people of my State as the Marston affair, and the effects are truly national in scope. In the words of a recent editorial in the Detroit (Mich.) Free Press:

> Despite the promises of the attorney general, the investigation of corruption in Philadelphia has effectively been crippled. But the damage goes far beyond that city. Intended or not, fairly or not, Mr. Marston's firing cannot help but suggest to the American people that politicians with nasty little problems can put the fix in with the Justice Department.

It is clear from the superficial investigation by the Justice Department of itself that the American people cannot rely on the executive branch for the truth in this case. They have turned to us, the Congress, for help in finding out what happened and taking steps to see it does not happen again. They want answers to a lot of questions:

Did anyone attempt to expedite the removal of Mr. Marston because of a pending investigation of that person?

Did the President of the United States, or his assistants, or the Attorney General, know or have reason to know of that investigation prior to the removal of Mr. Marston?

Was the Department of Justice kept properly informed of the activities of the U.S. attorney's office in Philadelphia?

Did the subordinates of the Attorney General keep him properly informed of those activities, especially as they might relate to attempts to have the U.S. attorney removed?

Should the Attorney General and the President have reviewed their decision to fire the U.S. attorney after they became aware of certain investigations in progress?

Was the Attorney General aware of the record of frequent removals of prosecutors in Pennsylvania, often under apparent political pressure?

Did he take into account this history, and the effect it has had on the perception of justice, when deciding to remove Mr. Marston?

What steps did the Attorney General take to insure that no investigation would be impeded by the removal of Mr. Marston?

I do not consider the Marston removal to be a partisan matter. I have sought and would welcome cosponsorship and support for this proposal from both sides of the aisle.

In fact, many leading Democrats in my State supported the retention of U.S. Attorney David Marston because he did an outstanding job. These democratic leaders include former Senator Joseph Clark, former Deputy Attorney General Peter Flaherty, former Auditor General Robert Casey, and U.S. Congressmen ROBERT W. EDGAR, ALLEN ERTEL, and PETER H. KOSTMAYER.

This is a matter of justice—of the fact of justice and the appearance of justice. During his tenure, Mr. Marston earned the support of the community in Philadelphia because of his evenhanded record in attacking political corruption. In fact, one of his first major indictments was against one of the most powerful Republican leaders in the State, and it came just a few weeks before the 1976 general elections.

Despite this record, he was fired by the President on national television, apparently because of pressure from people reported to be under investigation by his office. If nothing improper really took place, we should know that to restore our confidence. But if the Justice Department was insensitive or worse, we need to find that out, and take whatever corrective steps might be appropriate.

I hope that the Senate will act promptly to clear the air of this cloud over our system of justice by learning the truth and sharing it with the American people.

For that reason, I am proposing the establishment of a Watergate-type committee to look into the Marston removal. My resolution is patterned after the resolution creating the Select Committee on Presidential Campaign Activities, and would have the same powers that the earlier committee possessed. The work of the committee would be done in 6 months, with its report due on or before August 1, 1978. In all respects, there is precedent for taking the action suggested by this resolution.

AMENDMENTS SUBMITTED FOR PRINTING

REFORM OF THE FEDERAL CRIMINAL LAWS—S. 1437

AMENDMENT NO. 1676

(Ordered to be printed.)

Mr. MATHIAS proposed an amendment to the bill (S. 1437) to codify, revise, and reform title 18 of the United States Code, and for other purposes.

AMENDMENT NO. 1677

(Ordered to be printed.)

Mr. ALLEN proposed an amendment to the bill (S. 1437), supra.

NOTICES OF HEARINGS

SELECT COMMITTEE ON SMALL BUSINESS

Mr. NELSON. Mr. President, the Select Committee on Small Business will convene 2 days of hearings in Oregon on the subject of agricultural labor certification programs and small growers. These hearings will be held on February 10 in Portland, Oreg. and February 13 in Medford, Oreg. Senator PACKWOOD will chair the hearings. The hearings are a continuation of the hearings held on December 20 and 21 in Washington, D.C., on the same subject. Further information on the hearings can be obtained by calling the Small Business Committee office at 224–5175.

ANTITERRORISM HEARINGS

Mr. RIBICOFF. Mr. President, the Committee on Governmental Affairs will continue hearings on S. 2236, the Omnibus Antiterrorism Act, on Monday, January 30, at 10 a.m. in room 3302 of the Dirksen Senate Office Building.

The following witnesses will appear before the committee:

Representative Don Clausen of California.

Capt. J. J. O'Donnell, President, Airline Pilots Association.

James E. Landry, General Counsel and Vice President, Air Transport Association of America.

Accompanied by: Harry J. Murphy, Director of Security; John H. Steele, Corporate Director of Security, Trans World Airlines.

ADDITIONAL STATEMENTS

FEDERAL ELECTION CAMPAIGN QUARTERLY REPORTS

Mr. ROBERT C. BYRD. Mr. President, the Federal Election Campaign Act requires that quarterly reports from candidates for Federal office and political committees must be filed on April 10, July 10, October 10, and January 31.

The Secretary of the Senate's Office of Public Records will be open Tuesday, January 31, 1978, from 9 a.m. until 5 p.m. to accept the January 31, 1978, report as required by that act. The Public Records Office is located in room A–623, 119 D Street NE., Washington, D.C. Reports submitted after the close of business may be placed in a clearly identified depository located in the lobby of that building. Additional information may be obtained from that office at (202) 224–0329.

NOTICE OF NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, the following nomination has been referred to and is now pending before the Committee on the Judiciary:

Charles H. Gray, of Arkansas, to be U.S. marshal for the eastern district of Arkansas for the term of 4 years, vice Len E. Blaylock.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in this nomination to file with the committee, in writing, on or before Friday, February 3, 1978, any representations or objections they may wish to present concerning the above nomination with a further statement whether it is their intention to appear at any hearing which may be scheduled.

EUROCOMMUNISM

Mr. MATHIAS. Mr. President, the American agenda is crowded with decisions to be made. Some of the decisions are domestic and concern us alone. Others deal with our relationships with other peoples and other nations.

One of the important subjects that deserves attention is the position that the U.S. Government should adopt with respect to participation by the Communist parties of Western Europe in coalition governments. All sides of this issue should be thoroughly aired.

The Honorable J. William Middendorf II has viewed this possibility from several perspectives. He has served as Ambassador to the Netherlands and as Secretary of the Navy. One may differ with his views, but none can challenge his credentials.

I ask unanimous consent that an article by Mr. Middendorf be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE FALL OF THE ITALIAN GOVERMENT, AND EUROCOMMUNISM

The fall of the Italian Government could signal peril ahead for the fragile fabric of the Free World. Italy, a stalwart member of NATO, makes a major contribution to the security of Southern Europe and to its soft underbelly, the Mediterranean. The Italian Navy, for example, presently shares with our Navy key responsibilities in keeping that body a relatively peaceful lake. The large and growing Soviet naval presence in the area coupled with the withdrawal of the British, and our own increasingly strained naval resources makes Italian support all the more valuable.

Further, if it weren't for the availability of Italian port facilities, we would not be able to maintain anywhere near the peacekeeping presence there that we do now. The critically important stabilizing presence of the Sixth Fleet during the 1973 Middle East War would not have been possible without our use of these ports. For one reason or another, most other Mediterranean ports have been closed to us and the potential loss of Italian ports, or indeed any weakening of Italy's NATO resolve and cooperation as a result of Communist influence within their government, would be cataclysmic to the West.

The makeup of the new Italian Government will thus be watched with greater than usual interest in the West. There is much talk that the Communists who probably will be asked to help form the government are "Eurocommunists", not to be confused with the Iron Curtain brand of Communists. Therefore, in the coming weeks much attention will be focused on precisely what is "Eurocommunism" and what does its ascendancy mean for the West.

Southern Europe, or, to be more precise, Latin Southern Europe, is faced with an inexorable advance of Communist parties from within. In Italy, France and Spain Communist parties owe much of their success to their promise to build a different kind of Communist society, one more humane than those in Eastern Europe and independent of Moscow.

Leaders of these three Communist parties have repeatedly professed attachment to the principles of democracy and independence, have publicly criticized the repression of human rights in East European Communist countries and have promised that each Communist party has the right to decide on all internal matters without Moscow's interference. Even if we don't question their sincerity, the real question is whether they can keep their promises once in power. Let's take a closer look at the history of Communism.

Most Communist parties have started their political growth in "alliance" with other "progressive forces" in an attempt to solve some crucial national issue, usually to form a government. The next step is to share power in a government of "national unity", followed by a coup that leaves the Communists as the sole government. The Communist moderate leaders of this first period are inevitably overthrown by hard-liners who accuse the former of weakness towards capitalism. The party is purged, bringing to the top those demanding "ideological purity". "Workers" and "peasants" replace intellectuals in key party positions. The terror begins, actual and potential opponents are physically exterminated, especially the moderate members of the Communist party. All Revolutions must first consume their young.

One might argue that while this happened in Russia in 1917 (years later Kerensky himself told me how this process worked in his case) and in Eastern Europe in the late Forties, times have changed. Not true. Look at the recent "national emergency" governments in South Vietnam and Cambodia in the transition period. The Communists first used representatives of churches and the bourgeoisie to gain their goals, then purged them all and even cracked down on the social categories that their former allies represented.

Lenin said that one of the signs of maturity of a Communist party is its ability to make compromises and to join alliances even if it is obvious that they will not last. Communist ideology makes politicians cynical and ruthless and their materialistic philosophy totally frees them of any of those moral restraints imposed on other politicians. They are simply marching to a distant drum. We should never forget that the doctrine itself leads always to a totalitarian end: Communists claim to have the ultimate truth in all aspects of social, political and economic life and will impose their "truth" by all means, including force.

What this all means is that even if present Southern European Communist leaders were sincere in their desire to avoid the classical form of repressive Communism, they would probably not be able to do so because of the unavoidable mechanics of the system.

There is no reason to doubt that their present desire to be independent of the Russians is a genuine one. But can that ever be possible once a Communist party is in power? There are goals and interests in the international field which have to be persuaded in common. During the Vietnam War, independent Romania and Yugoslavia joined Russia and China who temporarily forgot their own profound conflict, and all other Communist countries and parties in support of Communist Vietnam. Similarly, Yugoslavia, which is not a member of the Warsaw Pact or Comecon, joined with other Communist countries in 1967 in breaking diplomatic relations with Israel. Vietnam, til recently unaligned with either Russia or China, seems now to have chosen Russia who is backing it in its war against Cambodia.

It should be clear that the independence of Communist countries toward Russia is imperfect and at most temporary, while their sense of solidarity to Communist doctrine is constant. We should not underestimate the importance of their sharing a Communist ideology—they speak the same language. And there is also an emotional element: whatever differences exist, Russia remains the Mother Communist country, and Moscow a Mecca for all Communists. Russian help will always be the preferred option to losing political power, because a pro-Moscow faction will always exist in any Communist party.

The recent very commendable statement by our State Department decrying Communist participation in the Italian Government has been received with mixed feelings in Europe, and questions have been raised about our right to express opinions concerning momentous events in other countries. Like it or not, the fact remains that the United States is the main economic and military power in the free world upon which strength so many countries now depend. But, we too depend on them. We cannot for long disregard what happens in other parts of the world and embattled democratic forces in Southern Europe under threat of Communism wait, even long, for our support such as the State Department statement.

Finally and more particularly, what these critics overlook is that Italy and ourselves are members of a fundamental alliance and that the question of Communist participation in the government of an alliance member impinges directly on the solidarity and future of that alliance. The toleration shown by the democratic world to Fascism in the Thirties led to the Second World War. We learned a bitter lesson the hard way. Let's not make the same mistake again.

TEXAS ACTS TO LIMIT GAS OUTPUT TO PREVENT LOWERING OF PRICES

Mr. METZENBAUM. Mr. President, my friends in the natural gas industry have been caught speaking out of both sides of their mouths at the same time. For years now we have heard their cry for lifting Federal price controls on natural gas. "Rely on the free market," they say. "Get the Government off our backs and we will produce the natural gas supplies needed to prevent a gas shortage."

But now we find that natural gas producers would like to have it both ways. As long as the demand for natural gas is high, they want to eliminate price controls and let the consumer prices soar to the heavens. Now when supplies have increased beyond demand, causing a temporary glut, those same companies turn to the Government for intervention to prevent gas prices from dropping. The Washington Post reported this week that the Texas Railroad Commission, long known as a staunch protector of major oil and natural gas interests in that producing State, has taken steps to prevent a temporary glut of gas supplies from driving down prices. Instead of being upset with this Government intervention, the gas producers in Texas are tickled pink. As one gas company official stated, "It's an attempt to balance supply and demand, and it's working."

Frankly, Mr. President, I have difficulty feeling much sympathy for my poor natural gas company friends in their time of need. When residents of Crystal City, Tex., had their gas supplies shut off last year because they could no longer afford to pay outrageous costs for deregulated gas supplies, the gas companies—and their protective State regulatory commission—responded in typical Marie Antionette fashion, "Let them eat cake." Those people were asking for a minimal amount of Government intervention to help them heat their homes and operate their stoves. To my knowledge, they are still without gas supplies, despite repeated requests for help. Mr. President, I simply cannot believe that

the natural gas producers who have been reporting record profits in recent years are half so deserving of Government help.

The gas companies would have us believe that there is no relationship between these recent events to control gas prices in Texas and our continuing efforts to maintain Federal price controls. Their arguments would be funny, if they were not so ludicrous. At the State level, gas producers are asking for Government controls to keep prices up, so they will not pay the penalty for a temporary glut—one which would hopefully benefit consumers in the intrastate market by driving prices down. But at the Federal level, these same producers are asking us to remove all price controls, so they can raise prices at a tremendous economic cost to the consumers. In both cases, the gas producers win and the consumers lose.

Mr. President, I ask unanimous consent that the Washington Post article I have referred to entitled "Texas Acts to Limit Gas Output to Prevent Lowering of Prices," be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Jan. 25, 1978]

TEXAS ACTS TO LIMIT GAS OUTPUT TO PREVENT LOWERING OF PRICES

(By J. P. Smith)

Texas has taken steps to limit natural gas production to prevent a temporary gas glut from forcing down prices in the state's unregulated gas market.

Framed as a conservation measure, the Texas Railroad Commission's decision goes into effect Feb. 1. The commission regulates natural gas and oil in the country's leading producing state.

The Railroad Commission's decision to fend off downward pressure on natural gas prices within the state comes at a time while Senate and House conferees are trying to end a deadlock on the natural gas deregulation issue.

Oil and gas industry executives such as the Natural Gas Supply Committee's David Foster say they do not expect the Railroad Commission's decision to prorate production will have an impact on the conferees' effort to get a compromise on the deregulation.

"I don't think there is any connection between the two," said Foster, who heads the industry's Washington lobbying effort to press for deregulation.

Critics of deregulation who support the House-based bill proposed by President Carter, which would continue gas price controls and extend them to the unregulated intrastate market, however, have argued in private that the softening of intrastate prices in Texas indicate that gas prices there are already too high.

One oilman, however, who has expressed concern over the so-called gas glut in the intrastate market, is John Buckley, vice president of Northeast Petroleum.

Buckley, whose company sells residual oil and other oil products, says the oil industry and major natural gas users such as utilities have overcompensated in the face of shortages by spurring production efforts, and taking conservation measures.

He says that while the United States will likely continue to have lingering spot shortages of natural gas, "If the conferees don't get a ceiling price on natural gas pretty soon—they could end up with a floor price, because the market is dropping off.

Currently 87 percent of the new gas supplies discovered in the United States never leaves the intrastate market because of the higher profits oilmen earn in the unregulated market. New gas in the interstate market now sells for $1.47 per thousand cubic feet, compared with an average price of about $1.95 per thousand cubic feet in the intrastate market. Deregulation, oilmen say, would raise new gas prices to the intrastate level.

The commission's decision thus far has been well-received by oilmen in Texas, who recently have become concerned about gas prices in the intrastate market.

"It's an attempt to balance supply and demand, and it's working," said Don Newquist of Lo Voca Gathering Corp., a Houston based gas wholesale sales company.

ARMY TESTS SOLAR ENERGY IN ALASKA

Mr. STEVENS. Mr. President, I would like to call attention to an interesting experiment to demonstrate the application of solar electric cells which the U.S. Army Cold Regions Test Center is performing at Fort Greely, Alaska.

The reliability of four types of solar cell panels is to be tested over a 10-year period. This test and similar ones at four other locations are being conducted for the Department of Energy with funds provided by the National Aeronautics and Space Administration Lewis Research Center.

I applaud this experiment. I believe that solar electric technology can provide reliable energy to defense facilities and other installations in remote areas where the costs of shipping in other fuels are very high.

In a recent letter, Col. James F. Henrionnet, of the Cold Regions Test Center, described this solar cell panel reliability test as follows:

This test is one of several tests at different sites being conducted by the National Aeronautics and Space Administration Lewis Research Center (NASA–LERC) for the Energy Research and Development Administration. Other Department of Defense sites include Fort Clayton, Canal Zone; Dugway Proving Ground, Utah; San Nicolas Island, Key West, Florida; and Fort Lewis, Washington. Funding for this test is being provided by NASA–LERC.

The objective of this test is to determine the lifetime of the different types of solar cell panels, component parts, and materials under the cold regions environmental conditions. Four types of panels of which four each (16 panels total) have been installed at Fort Greely and are being monitored monthly to determine their operational capability. Inclosure one describes the four types of panels being tested. This test is scheduled for 10 years. Additional types of solar panels may be added to this test in the future.

I have great hopes for this work and want all concerned to realize Alaskans are delighted to learn that Fort Greely's being used for this test.

A CLARIFICATION OF THE GENOCIDE TREATY

Mr. PROXMIRE. Mr. President, I would like to take this time to discuss an area of uncertainty in interpretation of the Genocide Treaty which has needlessly hindered its ratification in this country.

Article VI of the Genocide Convention provides that persons charged with genocide will be tried "by a competent tribunal of the state in the territory in which the act was committed or by such international penal tribunal as may have jurisdiction." There are some who argue that the latter phrase poses a danger that an international court might usurp the constitutional and legal safeguards normally guaranteed to U.S. citizens. Nothing could be further from the truth.

Here are the facts. It is now 30 years since members have ratified the treaty. In that time there have been no such courts established through the United Nations. There is no movement to do so. Moreover, the creation of such a tribunal would require another treaty which would necessitate a full two-thirds vote of approval in the Senate.

It should also be noted that the International Court of Justice has no criminal or penal jurisdiction. It could not be used for the punishment of genocidal acts.

Thus, article VI protects the right of each member state to try persons charged with genocide under their normal constitutional procedures. The second part of this article is, as the Foreign Relations Committee report of 1976 notes, "a dead letter at this time."

It is unfortunate that this provision has been cited as an objection to the Genocide Treaty. It is astonishing the opponents of the treaty continue to resort to such inconsequential and misguided assertions to obstruct its passage. We simply cannot allow this to continue. The Genocide Convention must be ratified immediately.

BIOMASS ALTERNATIVE FUELS AND THE ENERGY TAX BILL

Mr. MARK O. HATFIELD. Mr. President, a special report prepared in September for the Committee on Finance by the staff of the Joint Committee on Taxation concludes that "biomass conversion can provide a renewable and economically viable power source alternative for large areas in the United States."

In recognition of this potentially significant alternative energy source, both the House and the Senate versions of the energy tax bill, currently in conference, provide a variety of incentives for conversion away from traditional fossil fuels, such as crude oil and natural gas, and to fuels characterized as "alternate substances," which include fuel derived from what is known as "bioconversion." Bioconversion, as my colleagues know, is the process of producing energy from various organic substances, called biomass, such as agricultural, industrial, forestry, and municipal wastes.

The energy produced by bioconversion may be electricity, gas, liquid, or solid fuel. The obvious advantage of the process, in addition to the fact that capital fuel resources such as oil and coal are conserved, is that waste products are being disposed of and recycled at the same time that energy is produced. Also, numerous biomass products are either at the prototype stage or are commercially available right now.

An October 25, 1977, report issued by

the Library of Congress Congressional Research Service, entitled "Energy From Solid Wastes: Bioconversion and Other Chemical Processes," describes several companies utilizing three separate processes for converting solid waste into energy. The report points out that two of the processes—pyrolysis and hydrogeneration—have advanced to the demonstration and pilot plant stages and that the third process—bioconversion—has been the subject of increasing interest from the Environmental Protection Agency and the Energy Research and Development Administration.

This same CRS report describes the advances made by an Oregon company which has been a pioneer in bioconversion, developing products, and processes that exemplify the types of alternative energy sources—or "alternate substances"—sought to be encouraged by the energy tax bills now under consideration. The CRS report states:

A process developed by Bio-Solar Research and Development Corporation is reported to convert organic fibrous materials such as wood waste, grass, leaves, and peat into pellets that can either be burned directly like coal or converted into gas which can be burned to produce steam. This technology has been internationally licensed.

The Bio-Solar Research and Development Corp. referred to by the CRS report is a Eugene, Ore., company, and its plant, which produces "Woodex" fuel, is located in Brownsville, Ore.

This remarkable company, begun and operated by an enterprising scientist named Rudolf W. Gunnerman, has received national attention in recent months, having been written about by Business Week and the Christian Science Monitor, and featured on the "NBC Nightly News."

While I, naturally, am proud that Bio-Solar is an Oregon company, this is not the only reason that I have brought this matter to the attention of the Senate. The encouragement of viable alternative energy sources to decrease dependence on oil, natural gas, and highly polluting fuels, as even coal can sometimes be, is important in today's energy picture.

According to a report by Robert A. Lowe of the Environmental Protection Agency, entitled "Energy Conservation Through Improved Solid Waste Management," about 70 to 80 percent of residential and commercial wastes are combustible and have an energy content of about 9 million Btu's per ttn. The report states, for example, that had all solid wastes been converted into energy in 1971, and estimated 1.1 quadrillion Btu's could have been generated. This would have been equivalent to approximately 5,220,000 barrels of oil per day, or 1.9 billion barrels per year.

To illustrate this point further, I am told that the Bio-Solar Research and Development Corp.'s product, "Woodex," in its solid form can produce 9,000 Btu's per pound or 18 million Btu's per ton. Thus, one ton of "Woodex" has the approximate Btu equivalent of a ton of western coal or 3½ barrels of crude oil. Moreover, it can be up to 50 percent cheaper than other fuels, burns more cleanly than coal, stores indefinitely without being affected by humidity, and can be produced at a very low capital investment per ton.

Not only can this biomass fuel be used in all solid fuel furnaces, but its gas derivative can be used for gas-fired boilers and, with minor adaptation, for oil-burning plants as well. I understand that one large medical institution which switched to biomass fuel saved $200,000 in initial startup installation costs through the elimination of the need for coal scrubbers and antipollution equipment, and is now enjoying more than $75,000 per year in fuel savings.

Mr. President, it is my strong hope that when arriving at compromises on the various energy tax provisions now under consideration, the Congress will preserve those sections designed to encourage the development of "alternate substances," such as Bio-Solar's bioconversion processes, and the use of biomass fuels as an alternative energy source to gas and oil.

Mr. President, I ask unanimous consent that an article published by the Christian Science Monitor News Service describing Bio-Solar's development of the advanced bioconversion concept be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

WASTE INTO FUEL—IT WORKS!

(By T. W. Kinelen)

EUGENE, ORE.—The world has begun to beat a path to the door of Rudolf W. Gunnerman. The growing interest is directed at Mr. Gunnerman's patented process for turning organic fibrous waste—which the world churns out at an estimated rate of 150 billion tons a year—into a relatively clean, economical fuel.

Wood waste, peanut shells, grass, vines, leaves, agricultural waste, peat, and the refuse of sugar refining—are all feed stocks for making the patented new fuel.

Mr. Gunnerman's company, Bio-Solar Research and Development Corporation, already has issued licenses for production of the fuel to companies in Sweden, the Philippines, and Canada, as well as in the United States. A number of other applications for licenses are under study, including that of a major U.S. utility.

Mr. Gunnerman's process, developed over a three-year period of research and experimentation at a cost of $1 million, turns these organic fibrous materials into a pelletized fuel.

In this process the moisture content of the raw material is reduced to around 25 percent through compression. The feedstock is pulverized and the moisture content further reduced. The pellets are then formed under extreme pressure.

The pellets can either be burned directly as fuel or converted into vaporious gas to be used as boiler fuel to produce steam. At the firm's own production plant, the gas is fired to dry the pellets in the final step of production.

In October, at the invitation of Efain Friedmann, senior vice-president of the World Bank and its energy consultant, Mr. Gunnerman will make a presentation in Washington to representatives of underdeveloped countries. The invitation followed a three-day visit to the Gunnerman facilities by Mr. Friedmann and R. G. Fallen-Bailey, senior engineering consultant to the bank and the United Nations.

World Bank interest in the fuel reflects the fact that the bank has made loans totaling $2 billion to underdeveloped nations solely for energy. Conceivably, the bank could finance plants for making pelletized fuel in such countries.

Although the Energy Research and Development Administration has shrugged off Mr. Gunnerman's process, the process has been given full clearances by state and federal clean-air agencies for the environmental purity of both the pellets and gas. In at least two instances use of the fuel has helped customers avoid substantial outlays for antipollution installations that would have been required had those firms continued to use their former fuel.

Mr. Gunnerman, a native of Germany and graduate of the University of Munich with degrees in mathematics and physics, came to the U.S. in 1949 on a teaching scholarship awarded by Yale University. Four months later he resigned and went into real estate in Hollywood.

As a physicist, however, he continued his interest in heat transference and subsequently was awarded several patents on high-temperature heat shields.

The new pelletized fuel process grew out of an earlier search by Mr. Gunnerman for alternatives to other energy sources, such as coal, oil, and natural gas. A major impact of increased use of the pelletized fuel could be a substantial reduction in oil consumption. It is estimated that 250 tons of pellets is the heat equivalent of 750 barrels of oil.

Research, development, and daily production of the pellets are carried on by Woodex, Inc., Bio-Solar's producing subsidiary, at Brownsville, Ore., where an inventory of 5,000 tons of pellets is maintained. Present daily production of 100 to 110 tons now goes to customers in Oregon and Washington.

Early licenses for manufacture of the fuel have been granted in the U.S. to Hines Lumber Company, Burns, Ore.; Eclipse Lumber Company, Port Angeles, Wash.; and Jason Day Lumber Company, Coeur d'Alene, Idaho.

What are known as master licenses have been granted in British Columbia, Sweden and the Philippines. These licenses authorize the holders to issue sub-licenses to others to build plants for fuel manufacture.

One important factor creating demand for licenses is the relatively low capital investment required. Plants can be built and go on stream in six to nine months at a cost of $750,000 to $1.5 million.

At Brownsville, Woodex, Inc., is producing the fuel at a cost of $15 per ton, including feedstock purchase and cost of production, and selling the pellets at $22 per ton, FOB, from the plant.

S. Medill, Ltd., of Nanaimo, on Vancouver Island, holds the master license for British Columbia. In Sweden the master license holder is SVETAB, the Swedish Industrial Establishing Corporation, which will grant licenses to manufacture in Sweden, Finland, Denmark, and Norway.

In an interview with Mr. Gunnerman, the inevitable question of "going public" was raised. Would he respond to repeated inquiries about buying stock in his undertaking by making a public offering?

"Right now I would be foolish to say no." But, he added, "I would be just as foolish to say yes." He is the sole owner of the firm.

METRO FINANCING

Mr. MATHIAS. Mr. President, in my review of the administration's 1979 budget request, I noticed the omission of an important item in the Department of Transportation's budget. I refer to the lack of continued funding for the Washington, D.C., regional rail system, Metro. It seems incongruous that while Congress is struggling to develop a national energy policy, the 1979 budget request

does not reflect the contributions mass transit can make to energy conservation with systems like Metro which demonstrate enormous success. Over 150,000 people a day have chosen to use Metro, because of its convenience, and the number of users is growing as new tracks are open to the public. In addition to the energy-saving aspect, Metro has substantially reduced the congestion on the overburdened roads of our Nation's Capital.

Currently, the elected leadership of the Washington area is reviewing the miles of Metrorail construction which are not yet financed. Their review, undertaken at the direction of the Federal Government, is intended to reevaluate the need for various segments of the planned 100-mile system. Particular attention is being paid to construction and operating costs, as well as to the potential benefits to the citizens of the metropolitan area and to the Federal Government.

This process, of course, must be completed by the local officials before we will have a firm view of the funding requirements necessary to provide the full transit system the region requires. However, I believe the important decisions, which will shape the character of this region for decades to come, should be made by local elected officials on the merits of the various projects, rather than on some artificial funding ceiling.

For this reason, I am concerned about the current position of the administration, which appears to limit any future capital funding for Metrorail to funds which can be made available by the interstate highway transfer process. This would place a severe constraint on the local decisionmaking necessary for such a major regional venture. Consequently, when the regional officials have completed the alternatives analysis decisions, I will work to insure that the capital funding is made available for the full system that this local planning process validates even if it should require Federal funding beyond that available from local interstate transfers. While we will not know the extent of that need until the results of the local alternatives analysis are presented within the next few months, I do want to make clear at this point that, in my judgment, the local officials should be guided by what is best for the National Capital region rather than by what funds can be made available under some arbitrary fiscal limitation.

The 1979 budget request provides no Federal funds at this point for continued Metro rail construction or additional debt service participation as provided by Congress last year. However, the President's budget does clearly indicate that the administration anticipates submitting budget amendments to deal with the question of Metro financing. It is important that submission of such budget amendments occur prior to the completion of the 1979 appropriations process.

As I did last year, I will work with the Senate Budget Committee, Appropriations Committee, and the Subcommittee on the District of Columbia of the Governmental Affairs Committee to insure that the necessary provisions are made in congressional budget and appropriations actions to enable this important project to proceed effectively. I look forward to the continued development of this public transportation network and its contribution to a more cohesive National Capital region.

In closing, I would like to remind my colleagues and the administration that Congress has repeatedly stated that our Nation's Capital must set an example with the most energy-efficient, ecologically sound, and complete mass transit system possible.

THE PANAMA CANAL TREATY DEBATE

Mr. HATCH. Mr. President, the proposed Panama Canal treaties will soon be reaching the Senate floor for a vote. It is not fashionable to oppose these treaties, a situation reflected most clearly in the news coverage of the ongoing debate. Opponents have been consistently characterized as indulging in grade-school chauvinism, and the overwhelming disapproval expressed by the American public has been repeatedly represented as "backward" and "blind to present-day realities."

This attitude of condescension is dangerous for several reasons. It calls into question the integrity of a system that was originally designed to reflect the will of its citizens. It divests treaty proponents of their responsibility to answer the very many serious questions that remain unresolved by the present version of the treaties. And it deprives the issue at hand of the larger context within which a matter of such grave implications should necessarily be considered.

An extremely perceptive article, appearing in the December issue of the American Security Council's Washington Report, does a great deal toward restoring the perspective vital to the consideration of these important treaties. I commend it to the careful attention of my colleagues, and ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

WHY WE MUST KEEP THE CANAL

(By M. Northrup Buechner, editor)

(Quite a bit has appeared in the news media recently about the Panama Canal issue. Most of it has been in response to the PR campaign orchestrated by the White House to gain Congressional and popular support for the proposed Treaties. The White House effort has been primarily theatrical, with the elaborate dinner for the Latin American leaders being the big event, carefully staged for maximum TV coverage.

(Leading opposition voices have been given grudging play in the press. And the powerful popular opposition has been relegated to sparse reports of public opinion polls.

(The article below is one we recommend highly to WR readers. It goes to the issues behind the Treaties. It reveals the inadequacy of the opposition arguments that have been presented so far in the Congress. And it provides a valuable service on behalf of the general public, by offering a compelling rationale for the so far inarticulate cry of objection from the American heartland.)

The abysmal level of the public debate over the Panama Canal was epitomized in a national interview with a prominent undecided Senator. Asked what considerations he was weighing in making up his mind, the first thing he mentioned was the veto power the new treaties give Panama over a second canal. The public pondering of such details has spread the impression that only trivia is at stake in this debate. Nothing could be further from the truth.

The public advocates of keeping the canal, however, have missed the point almost as badly as that Senator. The primary issue is not the military importance of the canal. It is not the economic importance of the canal. And it is certainly not the details of the new treaties. The primary issue is the right of the United States to exist.

The moral principle at stake is the right of the United States to keep her values, her achievements, her wealth, in the face of overwhelming global opposition. And since a country, like a man, cannot survive without values, at issue is the right of the United States to survive.

That is why the American people oppose the new treaties. That is the principle behind their desperate feeling that giving away the canal would be wrong in some way much more important than they know how to say. When they tell reporters "we have given away too much already," and "we have to stop letting them push us around," that is what they are trying to say. Though they lack the words, they see surrender of the canal for what it would be: a step in the direction of renunciating the United States' right to her values and her life.

Unfortunately, a national debate cannot be won without the words. It is not enough for people to be right. They must know why they are right. They must have the words and principles to defend their position. What happens when they do not has been most evident in the United States Senate.

Because they did not know how to oppose surrender of the canal in principle, a number of Senators have tried to prevent its surrender by becoming enmeshed in debate over the details of the new treaties. In doing so, they have made several significant contributions to the other side.

They have accepted a context for debate where it is treated as already established that we should give up the canal and the dispute therefore, is only over the side conditions. They have trapped themselves in a position where, if the conditions to which they object are changed, they cannot vote against the treaties. And they have been diverted from giving any effective leadership or voice to their enormous support in the general population.

What position should they have taken? How should the new treaties be opposed? The most damning evidence against the treaties is the arguments that are given in their favor. Those arguments fall into two general categories: the practical arguments and the moral arguments; or the arguments from fear and the arguments from guilt.

THE PRACTICAL ARGUMENTS

The most extreme, and therefore the clearest, of the practical arguments holds that if the Senate rejects the new treaties, Panama will become "another Vietnam." In other words, we should give up the canal out of fear of a war with Panama or, even more disgraceful, out of fear of independent guerrillas.

This argument marks a new low in the level of political discourse in this country and not many have had the effrontery to make it openly. That it has been left largely to implication and innuendo is the only sign that our leaders retain any respect for the American people.

For example, it was argued explicitly before the Senate Foreign Relations Committee that the best way to retain access to the canal is to give it to Panama so they will be on our side if we should have to defend it. It is very

revealing (and somewhat frightening) that this argument was taken at face value by all the news media, and its implications went completely unnoticed.

Militarily, observe the helplessness of the United States implied by so desperate a need for support, and from Panama of all places, as to justify giving away the canal.

Strategically, observe the absurdity of assuring access to the canal by placing all the complex, delicate machinery and equipment and controls for its operation in the hands of a potential enemy.

And, finally, since attacks by Panama are the only current danger to the canal's security, observe the threat implied by raising the issue of, and hence doubts about, our access to the canal. The real meaning of that argument was that if we try to keep the canal, Panama will deprive us of its use, and therefore we had better give it to them.

To spread this kind of thinking, an unforgiveable campaign has been carried on through the media for the last several months, specifically directed at undermining the self-confidence of the American people and frightening us into giving up the canal. Its most disgraceful element has been the effort by our own military leaders to leave the impression, again by hint, insinuation, and innuendo, that the United States is militarily impotent to assure the security of the Panama Canal.

The argument about access to the canal, for example, was repeated several times before the Senate Foreign Relations Committee by military leaders. When the Panamanian dictator was making thinly veiled threats of guerrilla war, the chairman of the Joint Chiefs of Staff did not dismiss him as absurd. Rather he implied that the threat was serious by saying he could not defend the canal with 100,000 men.

In the face of this atmosphere of national self-abasement, when President Carter clearly stated that we can and will defend the canal, his declaration came like a breath of fresh air. Then, he threatened that it would be a major, difficult, dangerous undertaking, thus contributing to that atmosphere himself.

It is shameful that this kind of fear was a major factor in the negotiations for the new treaties. Fear is a disastrous motive on which to base policy in any case. But whatever consequences might have been expected from such a policy, ceding the canal out of fear of Panama would have been beyond anyone's ability to predict.

There is no way that Panama could become another Vietnam. Militarily, the two situations have nothing significant in common. Guerrillas could be even a minor problem only if we insisted on following the same insane policy we pursued in Vietnam of fighting effects rather than causes.

In this case, however, fighting of any kind can be avoided altogether. All that is necessary is a statement by the President that an attack on any part of the Canal Zone would be considered an attack on the United States, and that any country supporting such an attack would be considered an enemy of the United States and treated accordingly.

The practical argument also holds that surrender of the canal is essential for good diplomatic relations with the Latin American countries. But even if *they* were the great powers of this hemisphere, it would be obviously self-defeating to curry their favor by giving away our possessions.

Yet, blinded by a frantic, suicidal anxiety over the good opinion of the world in general and our southern neighbors in particular, that is the course insisted on by most of our political and intellectual leaders. The tragic failure of their leadership to be worthy of the American people was never more evident.

It would undoubtedly be pointless to remind those leaders that it is *we* who are the great power here, and if anyone should worry about good opinions, it is our southern neighbors who should worry about *ours*.

THE MORAL ARGUMENTS

But if the practical arguments are insulting, the moral arguments are worse, much worse.

It is said we stole the canal and our presence in the area represents a colonialist affront to the sensitive feelings of the Latin American people. We should give up the canal, it is implied, out of guilt for these offenses.

The charge of colonialism, though repeated mindlessly by everyone, is a transparent fraud. A colony was a settlement of people, not an industrial engineering enterprise. A colony, by definition, was administered for the economic benefit of the mother country. The Panama Canal is not a colony, nor has the United States ever had a colony anywhere in the world.

But the vilest distortion in the whole debate is the charge we stole the canal. It is the exact opposite of the truth.

The opposite of theft is production. We did not steal the canal; we built it. The moral right of the United States to the canal is the right of any creator to what he has created. That right, however, is a property right, the root of all property rights, and it is not surprising that modern intellectuals and politicians are unwilling to defend anything based on that source.

It is their view that control of the canal by the Panamanians is a legitimate aspiration of the Latin American people. But there is no such thing as a "legitimate aspiration" by some to an achievement created by others.

Not only did the United States pay the costs of constructing the canal. It was her citizens who figured out how to conquer the previously unconquerable obstacles and then directed the construction in an enormously heroic effort. The Panama Canal was the greatest engineering feat in the history of many up to that time and we did it.

Nothing is more depraved than ridiculing the American people for their pride in their canal, a tactic adopted by some, not all, of the advocates of the new treaties. No people ever had a better right to pride in any national accomplishment. The Panama Canal is a reflection and embodiment of all that is best in the American character.

Whatever shenanigans were involved in getting sovereignty over the Canal Zone, and no one's account makes them very serious, they are nothing next to the incredible achievement of the canal itself. Without us, the Canal Zone would be just so much empty, deadly, malaria infested lakes and jungle—as would the rest of Panama.

If one considers what Panama would be like today without the canal, it is clear who has received a disproportionate share of the benefits, and if moral debts were to be collected, who would owe what to whom. Then consider that an agreement reached in conjunction with the new treaties calls for us to pay them some 345 million dollars. This is over and above the negotiated increase in payments for use of the Canal Zone from 2.3 million to about 60 million dollars a year.

WHY THEY WANT THE CANAL

There is no moral justification whatever for the demand that the United States give up the canal. What then is the cause of that demand? The same cause that is the leitmotif in the treatment of the United States by most of the undeveloped world.

It is the motive behind the burning of American consulates, the attacks on American diplomats, the seizure of American fishing boats, the expropriation of American property, the constant attempts to humiliate us in the U.N., all of it accompanied by demands for more money, and lately, by claims of a right to a share of our wealth.

Stripped of the meaningless vicious jargon about colonialism, imperialism, and exploitation, the moral argument holds that we must give up the canal to satisfy the malice, hatred, and envy of the worst elements in the Latin American countries, and indeed, in the whole undeveloped world. Those are the "sensitive feelings" we are accused of affronting.

What is the cause of this global hostility toward the United States? It comes from two related sources.

First, whether communist, fascist, socialist, or non-ideological, the underdeveloped countries of the world are almost all dictatorships. As such, their hatred and fear of the United States has a purely practical element.

We are the last, best, shining example of the kind of life that is possible to man on earth when he is left free. We are the unavoidable proof that the brutality, torture, terror, and death they have imposed on their people are unnecessary.

But the more fundamental cause of their opposition is also the cause of tyranny as such. It is "envy" in its most vicious, virulent, destructive sense. It is what Ayn Rand has identified as "hatred of the good for being the good."

Today that motive is widely regarded as normal and natural. It is sympathetically explained, "Of course they hate us and would like to see us destroyed. After all, we are rich and they are poor; we are great and they are small; we have created achievements they cannot approach; we built a canal they could not conceive."

What that view sanctions and expresses is the ultimate evil in human psychology, the lowest and worst motive that is possible to man. It represents a hatred of every living human value, the same motive that sets up concentration camps, torture chambers, and dictatorships as ends in themselves.

The canal is a hatred symbol all right, but not of a nonexistent American colonialism. What the canal really symbolizes, and what the value-haters want symbolically to wipe out by making us give it up, is the overflowing abundance of energy, efficacy, and pride of a free people.

To surrender the canal in the face of such a motive is unthinkable. It would mean accepting their view of our virtues as vices and our achievements as stains on our national character. It would mean sanctioning hatred of the United States as natural and right and deserving a positive response. To what portion of our wealth and achievements could we claim a right after that and on what grounds?

That is the most important reason for keeping the Panama Canal. If there were no other reason whatever, that would be sufficient to hold on to it for dear life.

CONCLUSION

Those who think the Vietnam War demonstrated the unwillingness of the American people to fight for their values should think again. The only thing that war demonstrated was that the American people will not fight indefinitely for nothing.

The difference between Vietnam and the Panama Canal is the difference between fighting to save the house of a remote neighbor you have never met and fighting to save your own home.

The American people want to keep the Panama Canal. They are right to want it. And they will support the policies necessary to do so.

There is no practical reason for surrendering the canal. There is no moral reason. There is nothing but the pressure of a viciously irrational global opposition. The Senate should confound that opposition and assert the United States's right to keep her values and her life by rejecting the new treaties.

WATERWAY USER CHARGES: THE FARMER, THE STEEL INDUSTRY, AND THE BARGES

Mr. DOMENICI. Mr. President, my colleagues may have heard a good deal about the "opposition" of farmers and the steel industry to waterways user charges. It appears to me, however, that something is missing from this simplistic assessment: It assumes—incorrectly—that most farmers and steel companies are heavily dependent on barge traffic, and that neither group would gain from a balanced national transportation policy that begins to end the heavy hand of subsidies that powers the barges.

In an effort to understand this problem, I asked the Department of Transportation to see how grain and steel moves out of various States. I asked to see if these groups would be more likely to suffer from a slight increase in barge rates over the next decade, or from the continued deterioration of the railroads.

Surprisingly—at least surprisingly in relation to the rhetoric—this study found that the farmers in many States do not ship at all by water. Grain States such as North and South Dakota, Kansas, Montana, Wyoming, Colorado, Nebraska, Oklahoma, and Texas send virtually no grain out of their States by water. They are dependent on rail and trucks. This natural dependency means they will rise or fall with the viability of the railroads.

These grain farmers benefit not a whit from subsidized barge rates. In fact, they very likely suffer directly because the railroads are often accused of jacking up their rates in these land-locked areas so they can offset the cost of competing against artificially low, subsidized rates of the federally supported barge industry. This also can lead to an inability to modernize and to track abandonments.

Is it really equitable to the grain State farmers to, in effect, subsidize only those lucky enough to ship by barge? A national policy to help farmers move grain to market should subsidize the farmer, not a favored type of transportation.

Steel shipments represent another case of exaggeration. The proponents of the barge industry like to argue that waterway user charges will prove disastrous to the steel industry, because the steel industry is supposedly so dependent on waterways.

But look at the real impact. User charges will not affect iron ore movements on the Great Lakes; the St. Lawrence Seaway and the Great Lakes are excluded. They will not affect metallurgical coal shipments, since user charges might add by the year 1990 at most 0.1 percent to the cost of a typical shipment of metallurgical coal, due to the short distances and high values of such coal. And that is only coal shipped on the waterways.

But what about steel products? The DOT found that many steel products are not moved at all on the waterways, even when heavily subsidized by the taxpayer. And those products that do move by barge are shipped in tiny percentages. No metal stampings move by water. Do iron and steel castings move by water? Well, 1/500 of the national total does. Less than 2 percent of the metal cans move by water. And so on.

What the steel industry does not mention is that a U.S. Steel's for-hire barge subsidiary handling all sorts of goods is one of the Nation's largest. Maybe that is the real reason for the industry's concern.

Mr. President, I ask unanimous consent that these DOT calculations be printed in the RECORD.

There being no objection, the calculations were ordered to be printed in the RECORD, as follows:

DOT EVALUATION: GRAIN

Two different approaches were used to obtain information on grain movements from 17 different states broken down by mode (including combination modal shipments). First, data were compiled from a computer tape containing estimated intra- and inter-regional commodity flows for 1972. While this gives a fairly complete picture of such flows, it is important that any interpretation of the data be made in the context of the underlying assumptions which are described below.

A second method was to use a variety of state sources with independently estimated modal splits. Although we have not reveiwed the various methodologies of the state studies in detail, this appears to be a more accurate modal breakdown. Unfortunately, the number of states for which we could get this information is limited.

Farm to market movements of grain are very difficult to trace, especially given the nature of the product. Once corn, for example, arrives at a central elevator, it is indistinguishable from other corn received. To the extent that a single elevator sends corn to a variety of markets, the link between actual origin and actual destination is lost. It is also worth pointing out that virtually all grain involves combination modal shipments since shipment from farm to elevator will be by truck or wagon. These initial truck movements are often difficult to determine statistically.

The 1972 commodity flow tape is described in detail in the report, Freight Commodity Flows, 1972; Final Report, March 1977, submitted to the Transportation Systems Center, U.S. Dept. of Transportation. Regrettably, the data are six years old, but a great deal of time is required to develop and process the necessary information. The tape is based on statistics from the Corps of Engineers' Waterborne Commerce Statistics and the One Percent Waybill Sample for railroads. It, therefore, contains relatively complete water data and most but not all rail movements.

Truck statistics were unavailable. The truck shipments given in Freight Commodity Flows, 1972, represent a "best guess" based upon the existing rail and water data and independently derived estimates of regional grain production, consumption, and exports (see Attachment (1) for a complete description of the estimating procedures).

Our analysis of the data leads us to believe that the most reliable information would be for rail and water. Comparisons between these modes would give a reasonable indication of 1972 modal splits. We are much less confident of the truck data given the assumptions that were required to create it, and suspect that such shipments are generally understated. The very local farm elevator movements are not included in the data base and subsequent truck movements from elevators may be underestimated.

The 1972 freight movements are BEA–BEA and assignment to specific states as requested in Senator Domenici's letter is in some cases difficult (some BEA areas are not unique to a single state). Rather than make state assignments, the information has been aggregated into areas that include some states, and some inter-state regions. Because rivers form the boundaries of many midwestern states, this breakdown yields some interesting results that might be obscured using state data only.

It must be emphasized that for intermodal movements, each leg is represented separately in the data, the absence of water movements from Central Iowa, for example, is indicative of the fact that there are no major navigable rivers in the region defined as "Central Iowa." Many of the recorded rail movements from "Central Iowa" to "Iowa/Illinois" are undoubtedly shipped to a second destination via barge.

A summary table of grain shipments from various shipping areas is included as Attachment (2). This information must be carefully interpreted in light of the data problems and double counting of intermodal tonnage discussed above. The computer printout and attached description of the shipping areas of all grain movements is included as Attachment (4).

Various state publications on modal shipments of grain provided a second source for modal share estimates. During the past month, we have reviewed:

Changes in Destination and Mode of Transport for Illinois Grain 1954, 1970, and 1973. Dept. of Agriculture Economics, University of Illinois at Urbana-Champaign, August 1976.

The Market for Illinois Grains. Dept of Agricultural Economics, Univ. of Illinois at Urbana-Champaign, August 1976

Wheat, Milo, Corn, and Soybeans Shipped from Kansas Elevators, June 1, 1971–May 31, 1972: To Where and How. Research Paper 24, Agricultural Experiment Station, The Texas Adm. University System.

Texas Wheat Flows and Transportation Modes, 1975. Texas Agricultural Experiment Station, the Texas A & M University System.

Grain Movements between Southern and Corn Belt States, A Special Relationship. Southern Cooperative Series, Bulletin No. 209, March 1976.

Numerous similar documents are available for some of the other states of interest to Senator Domenici, but time did not permit a more complete review. It was difficult in some cases to come up with a modal share estimate in any sense comparable to the numbers derived from the 1972 freight commodity flow tape. The Texas documents, for example, estimate shares for sub-markets of the entire grain market. Shipments of corn from other states to Texas grain elevators (1974) (see Table 26 of Texas Corn Report) were:

	(1)	(2)
Originating State:		
Kansas	23.5	76.5
Nebraska	81.2	18.8
Other	57.6	42.4

[1] Percent of corn received by rail.
[2] Percent of corn received by truck.

Note that this table reflects shipments to elevators only and not to Feedmills and Feedyards.

Wheat shipments (1975) from Texas elevators (See Table 16 of Texas Wheat Report) to various destinations were:

	(1)	(2)
Destination:		
Houston/Beaumont/Galveston Ports	67.7	32.3
Corpus Christi Ports	79.6	20.4
West Coast Ports	100.0	----
Louisiana Ports	100.0	----
Texas Flour Mills	78.7	21.3
Other Texas Elevators	53.1	46.9

[1] Percent of wheat shipped by rail.
[2] Percent of wheat shipped by truck.

Additional modal split data from the other referenced documents are given in Attachment (3). Generally, trucking appears to be a more important market element than the 1972 commodity flow tape would indicate. This is not surprising in lieu of the problems encountered in constructing the 1972 tape as discussed above. The basic conclusions of three other studies are:

For Illinois, 1973 truck shipments from Illinois exceeded 50% of all grain shipments, rail's share was 13–34% and water's share 13–22%.

For Kansas 1971–72, rail shipments from elevators were in general 85–90% of the market with water and truck each having small shares.

For Ohio, Illinois, Indiana interstate shipments in 1970, truck movements were roughly 25%. Water's share ranged between 16 and 38% (highest for soybeans) and rail's share ranged between 35 and 63% (highest for corn).

DERIVATION OF GRAIN DATA: 1972 COMMODITY FLOWS

(NOTE.—"BEAR" stands for "Bureau of Economic Analysis Region" otherwise called "BEA Economic Area." See 1972 Obers Projections, Series E, Population, Vol. 1, U.S. Water Resource Council for a description of BEAR's. BEAR boundaries are identical to county line, i.e., each county in any state is uniquely part of a single BEAR. BEAR's are made up of groups of counties, not necessarily from a single state.)

Steps 1–10 describe how the basic data base was derived. The first 7 steps determine the extent to which a BEAR is assumed to be shipping and/or receiving area.

1. USDA has data available on grain produced by county and on amount sold from farms by state. It was assumed that a county's share of grain sold from farms equaled its share of amount produced. County amounts sold from farms were aggregated to BEAR's.

2. Bureau of Census has data available on amounts of grain exported by port of export, allowing determination of exports from each BEAR.

3. Census of Manufacturers has U.S. consumption of grain by other manufacturing sectors (e.g., for wheat, the sectors were "flour and other grain products," "cereal breakfast foods," and "dog, cat and other pet foods"). Call this "industrial consumption."

4. Distribute "industrial consumption" to each county according to the number of people employed in the relevant industrial sectors (see Step 3) in each county available as part of the 1972 OBERS Projections. Aggregate county data to BEARS.

5. For soybeans, changes in inventories taken from Agricultural Statistics, 1974. Corn and wheat stocks were assumed unchanged for 1972. Changes in soybean stocks distributed to BEAR according to soybean production.

6. Estimate grain for feed and seed (national total) (on farms) by the equation:

Grain for feed and seed = Grain sold from farms, exports, industrial consumption (for soybeans) increases in inventories.

7. Distribute to BEAR's grain for feed and seed according to the following:

Corn: to state by No. of hogs and cattle in state, to BEAR by farm earnings.

Wheat: to state by wheat production by state; to BEAR by farm earnings.

Soybeans: to BEAR by farm production of soybeans.

After Steps 1–7, each BEAR can be identified as a "surplus area" (grain sold from farms exceeds grain exported and grain consumed by industrial sector + grain used for feed and seed + increased inventory (if any) or as a "deficit area," known shipments (see steps 8 and 9) balance deficits and surpluses to some extent). Remaining "unexplained" imbalances are removed by assuming additional rail and truck shipments.

8. Water shipments (dock to dock) were compiled by U.S. Army Corps of Engineers. It was assumed that 100% of all water shipments were included in Corps' statistics.

9. Basic rail data were taken from One Percent Waybill Sample. All shipments in sample were included as "hard" rail data (expanded to 100 percent). Because the tonnage in the expanded waybill sample was less than the tonnage reported by Class I Railroads in their Freight Commodity Statistics, additional rail movements were assumed to have occurred in the final balancing procedure (step 10).

10. Surplus and deficit BEAR's after all known shipments were accounted for, were identified. These remaining imbalances were eliminated by assuming:

(a) Sufficient additional long haul rail movements so that final rail flows of the data base were approximately equal to reported movements of Class I Railroads.

(b) Inter-BEAR truck hauls to eliminate remaining deficits.

Steps 1–10 describe how the basic tape was derived; steps 11 and 12 describe how these data were used to develop the shipment matrices for this study.

11. BEAR's were combined into state areas to determine shipments from the states as per Senator Domenici's letter where possible (e.g., "Ohio" consists of BEAR's 62 Cincinnati, 63 Dayton, 64 Columbus, 68 Cleveland, 69 Lima, 70 Toledo). States not mentioned specifically in the letter were combined into broader groups (e.g., "North-east"). Some BEAR's were part of two or more states. Such BEAR's were used to define additional shipping/receiving (S/R) areas (e.g., "Iowa/Illinois" consists of BEAR's 79 Davenport-Rock Island-Moline, 81 Dubuque, 113 Quincy). See Attachment (2) for a complete list of S/R areas.

12. Shipments (by mode) from each S/R area to every other S/R area were compiled in separate tables in the computer output. This was done separately for "corn," "wheat," "soybeans," and "all grains." "All grains" is simply the sum of the three individual grains in this study. For example, on page one, 561,000 tons of corn were shipped by rail. From the Ohio BEAR's to the East Southeast area (see Attachment (2)). This represented 90.3 percent of corn shipments from Ohio to the East Southeast as 60,000 additional tons were assumed to move by truck. The 87,000 tons of corn shipped by rail from Ohio to Ohio represent intra-BEAR shipments plus shipments between the BEAR's that are in the Ohio region.

ATTACHMENT 2

SHIPMENTS OF GRAINS BY TRANSPORTATION MODE, 1972

[Tons in thousands]

	Rail		Water		Truck		Total tons
	Tons	Percent	Tons	Percent	Tons	Percent	
Ohio	4,524	64	222	3	2,300	33	7,046
Wisconsin	161	13	358	30	680	57	1,199
Minnesota	3,776	32	5,641	47	2,493	21	11,910
Central Iowa	6,833	64	0	.....	3,785	36	10,618
Illinois	6,353	33	10,327	54	2,360	12	19,040
Indiana	5,686	50	849	7	4,886	43	11,421
Iowa/Illinois	268	3	5,907	76	1,605	21	7,780
Illinois/Missouri	2,870	39	2,718	37	1,700	23	7,288
Iowa/Nebraska	5,024	59	228	3	3,268	38	8,520
North and South Dakota	10,719	83	0	.....	2,145	17	12,864
Nebraska	4,994	91	35	1	440	8	5,469
Kansas/Missouri	5,220	82	574	9	610	10	6,404
Kansas	11,165	94	0	.....	775	6	11,940
Oklahoma/Texas	6,624	82	73	1	1,395	17	8,092
Colorado	1,103	33	0	.....	2,275	67	3,378
Wyoming	562	90	0	.....	60	10	622
Montana	2,239	94	0	.....	150	6	2,389
Idaho/east Oregon/east Washington	2,887	67	859	20	590	14	4,336
West Washington/west Oregon	657	31	1,445	67	50	2	2,152
All shipments	81,665	57	29,236	21	31,567	22	142,468

Note: Includes shipments of corn, wheat, and soybeans. All tonnage figures are in short tons. Percentages may not total 100 due to rounding.

ATTACHMENT 3

MODAL SPLITS FOR VARIOUS STATE GRAIN SHIPMENTS FROM STATE SOURCES

	Rail	Water	Truck
1 Illinois 1973:			
Corn	33.7	13.4	52.9
Wheat	18.6	22.6	58.8
Soybeans	13.8	18.6	67.6
2 Kansas 1971–72:			
Wheat from—			
Local elevators	88.2	.....	11.8
Terminal elevators	90.5	9.5	.....
Wheat to—			
Out of State	88.3	9.7	2.0
In State plus out of State	89.3	4.0	6.7
Corn	68.5	.....	31.5
Soybeans	83.8	5.1	11.1
3 Ohio, Illinois, Indiana 1970:			
Corn—interstate	63.1	16.8	20.1
Wheat—interstate	47.7	24.9	27.4
Soybeans—interstate	35.0	37.9	27.2

SOURCES

1. "Changes in Destination and Mode of Transport for Illinois Grain 1954, 1970, and 1973," Department of Agricultural Economics, University of Illinois at Urbana-Champaign, August 1976, tables 6, 7, and 8.

2. "Wheat, Milo, Corn, and Soybeans Shipped from Kansas Elevators, June 1, 1971–May 31, 1972: To Where and How," Research Paper 24, Agricultural Experiment Station, Kansas State University, Manhattan, Kansas, tables 3, 5, 8, 10, 23, 25, 27, 30, and 35.

3. "Grain Movements between Southern and Corn Belt States, A Special Relationship," Southern Cooperative Series, Bulletin No. 209, March 1976, appendix table B. 6.

IRON AND STEEL

The attached tables show shipments of iron and steel products for 1972. The data were collected in the Commodity Transportation Survey, which is one part of the Census of Transportation.

The first two pages show the modal split at the national level for all products which are classified in Standard Transportation Commodity Codes (STCC) 33—Primary Metal Products or 34—Fabricated Metal Products. This chart gives the modal splits at the 2-, 3- ,4- and 5-digit STCC levels.

Most non-ferrous products can be eliminated at the 3-digit STCC level,[1] leaving the commodities which are listed below. The modal share (on a ton-mile basis) held by water—inland, Great Lakes and Coastal—is also listed.

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[1] At the more detailed (4 or 5 digit STCC) level, many shipments are suppressed to avoid disclosing proprietary business data.

Description:	Water Modal Share Percent
Steel Works and Rolling Mill Products	8.4
Iron and Steel Castings	.2
Miscellaneous Primary Metal Products	1.6
Metal Cans	1.8
Cutlery, Hand Tools and General Hardware	.3
Plumbing Fixtures and Heating Apparatus	---
Fabricated Structural Metal Products	3.8
Bolts, Nuts, Screws, Rivets, and Washers	.2
Metal Stampings	---
Metal Services, nec. [Note: no shipments reported]	
Miscellaneous Fabricated Wire Products	4.3
Miscellaneous Fabricated Metal Products	1.2

While some non-ferrous products are included in these 3-digit STCC's they do not account for significant tonnage.

The remaining charts show shipments by mode and length of haul, separating "inland water" and "non-inland water." This judgment was made by examining the origin-destination pair for each shipment which moved by water. For example, a water shipment from Pennsylvania to Kentucky was assumed to have moved on the Ohio River, and was therefore call "Inland." When two forms of water transportation were available, the determination was made based upon the statistics in *Waterborne Commerce of the United States*.

The charts are arranged in the following order:

1. Total U.S.—All STCC's.
2. Total U.S.—Each 3-digit STCC.
3. State Charts—All STCC's:

(a) Interstate: Originating in state.
(b) Interstate: Terminating in state.
(c) Intrastate movements.

Many states do not originate iron or steel traffic and thus have only one chart, 3(b,) for movements originating out-of-state and terminating in-state.

VICE PRESIDENT MONDALE ANNOUNCES AN END TO FEDERAL EFFORTS TO RESTRUCTURE WESTERN WATER RIGHTS

Mr. HATCH. Mr. President, on January 10 the distinguished Vice President of the United States, WALTER MONDALE, addressed a joint convention of the Utah Legislature. In his well-received address, Vice President MONDALE said, and I quote:

I wish to state here again, we never, nor will we ever, at the federal level pre-empt or interfere with the state or local or private water rights in this country.

The Vice President emphasized that President Carter and Secretary Andrus have also stated this same point. This was welcome news to the people in the Western States who have been disturbed by "the most innovative, exciting, and creative efforts" to bureaucratize water. I am sure that the position taken by the President, by Vice President MONDALE, and by Secretary Andrus will make it easier to resist the self-serving interests of some bureaucrats and politicians to nationalize water in order to gain control over the allocation of one of the Nation's most vital resources. As I said in the New York Times last August 25:

Whenever government takes control over the allocation of a resource, people have to pay much more for much less.

I recommend the elegant address of the distinguished Vice President to the attention of my colleagues in the Senate and ask unanimous consent that it be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

ADDRESS BY WALTER F. MONDALE, VICE PRESIDENT OF THE UNITED STATES

Thank you very much, Governor Matheson, for the very kind introduction. The lovely First Lady, Mrs. Matheson; Speaker of the House, Mr. Sowards; President of the Senate, Mr. Jensen; Lieutenant Governor, Mr. Monson; my old friend, Governor Cal Rampton; my friend Gunn McKay; and friends.

I'm delighted to be here. I want to apologize for being a little late. We drove from Ogden today. We could have been on time, but I insisted that we stay within the 55 mile-an-hour speed limit over the objection of your Governor because he wanted to be on time.

It is a delight to be here again with Cal Rampton, whom I think is one of the most beloved public leaders in the history of this state. I remember a few years ago when he was running for re-election and he was worried about making it, so he called and asked me if I would campaign with him in Salt Lake City. Upon my arrival, I said, "Let's go down to the main street and shake hands." I'll never forget it as long as I live. The first person I met, I said, "Would you vote for Cal Rampton for Governor?", and the fellow's face lit up just beautifully, and he said, "I sure will. We gotta get rid of the guy who's in there!"

I served as Attorney General of my state for four and a half years, and I learned something about legislatures. That is, you'll never get in trouble with them as long as you do exactly what they tell you to do. And if you don't, they won't regret it. You'll just be without heat, water and lights for a couple of years. So you catch on. And so, it's with the utmost difference that I say that I'm delighted to be here and to have a chance to speak with you briefly at this hour of the evening. The Utah State Legislature is one of the ablest and most effective in the country.

This week, I'll be visting a number of Western States. Along with me is one of your own former Western Governors. A man who is a pillar of strength, of decency, of good judgment, common sense and one who has enormous experience which is needed to help us understand how best to serve this country—our Secretary of Interior, Cecil Andrus. (Whenever you want to applaud, just break right in. We couldn't get a hand for him in New Mexico, either. Secretary Andrus said, "Wait until we get to Utah. They really like me there!" Well, we're going to try Idaho tomorrow.)

Jack Watson, our gifted Presidential Assistant, has also been with us on this trip.

This morning, we began our visit in Albuquerque in a meeting with native American leaders. We met with several minority representatives of small business. We visited some remarkable research demonstration projects going on there in the area of solar energy, wind harnessing, geothermal, and other kinds of efforts to develop a new, clean, infinite source of energy which we are going to need as we increasingly find ourselves short of fossil fuels.

This afternoon, in Ogden, we met with the most impressive group of Small Business men and women and discussed questions of how the Federal Government can help, or get out of the way, or both to permit small business to begin to prosper, to grow, to be profitable, to be competitive, to be able to serve in that special, unique, and indispensible roll that small business has always served this country.

We've just come from a meeting with President Kimball of The Church of Jesus Christ of Latter-Day Saints. This is a visit that I have wanted to have for a long time. The contribution of the Church and its members to the religious strength and moral fiber as a sense of liberty in this country has been one of the truly remarkable contributions made by any institution in this country.

I went there, not only to discuss an objective that has been dear to me, and I think to all of you—Gunn McKay and others—namely, the tremendous and healthy influence of the church in terms of strengthening family life in this country. It seems to me that any policy that we pursue at the federal level, state level, the local level—that weakens family life should, for that reason, be stopped. Those efforts that we undertake to strengthen family life should be encouraged and expanded. I also went to see President Kimball for another reason. The President of the United States wanted me to ask if he had a good Polish interpreter because we could certainly use one. He said, "I know ours is pretty good, and I know he is better than the one President Carter had the other day."

I especially wanted to come to meet with you today. I know that once in a while the legislative process gets ridiculed. I think it was Bismarck who once said, "He who likes sausages and laws should never ever watch either being made." A very kind thought, but the truth of it is, that it is here, in this legislature, and in the legislatures of the other states, where the basic principles and directions of American Democracy are laid out and pursued. State legislatures are as close to the people as any institution in American Government. I have often said, I've never heard of a State Senator or State Representative with an unlisted phone number, and if I do, I know he's going to lose the next election. You are expected to be, it's a condition of your election, available at all times, to hear and to listen, not just to good news and criticism; because it is through you, that we make this remarkable thing called freedom and democracy work. And it ought to be, and it is, a central objective of our Administration to depend heavily, and in a possibly expanding way, upon the strength, the wisdom, the good judgment of the State Legislatures throughout this land.

I'm privileged to say that a close friend of mine, Marty Sable who recently ended his term as President of the National Conference of State Legislatures, agreed at your National Conference in Kansas City last year, that one of our objectives would be to establish a close, continuing, respectful dialogue with the leadership of the state legislatures of this country. And I renew that pledge again today, and hope that we can possibly grow and expand in the working relationship that is so essential to this country.

We say, we serve the same constituents. Americans are not interested in petty disputes between different levels of government. They are certainly not interested in the ways and the duplications that occur when different levels of government compete to do the same job. What they expect from us—whether we're on city council, on in the state legislature, on a county board, in the United States Senate, or in the White House—is to deal with their money as though it were our own—with respect, with care, with efficiency, with a sense of responsibility, and with a sense of responsiveness to their needs. That's what democracy is all about. And it's our duty as public representatives, serving the same citizens, to make certain that we deal with the public trust that is conferred upon us in the highest sense of the principles of trusteeship.

That is what we are trying to do in our new Administration. We are trying to work with state and local governments and their new leaders, and to cooperate with you. The most innovative, exciting, and creative efforts are being carried out in one of the most serious national problems—such as water. And I know, for example, that Governor

Matheson's Committee on Water which is working with the President in the development of the Nation's water policy. When the report comes out in six weeks, it will renew the point the President stated, that Secretary Andrus stated, and I wish to state here again, we never, nor will we ever—at the federal level—pre-empt or interfere with the state or local or private water rights in this country.

President Carter has served as a State Senator in the Georgia Legislature. I was privileged to serve as the Attorney General in my state. I know how close to the people state government is. I know how essential it is that we work with state governments and that there be trust and mutual respect at all levels. We don't claim to have all the answers. Indeed, we demonstrate everyday that we do not.

If there is one thing I've learned in my public life, it is that the most fatal fall of any elected official is a sense of errors. Someone once said that the spirit of liberty begins with the nation that you might be wrong. And it's when Government operates in that sense of fairness and openness that the people are most effectively served. If I can leave you with one message today, it is that we respect your views. We want to work with you in a sense of genuine partnership. We want to make the federal government serve the needs of your state and citizens you represent. And in this regard, we want your criticism.

Our Nation faces many problems today at home and abroad. But we must realize as we look at these problems that we live in the strongest nation on earth. There is nothing we cannot do if we work with a sense of fairness, if we work with a sense of cooperation, and if we work with a sense of optimism and faith, which has been so basic to this country from the beginning. This is the spirit of which we seek to represent you and this state and your citizens in our roll as federal officers in Washington.

I come here tonight to offer you our cooperation, to offer you our help, and to ask that you contact us and advise us when you feel we are moving in an inappropriate way or to encourage us when you think we are moving along the right course. It is this way and in this spirit that we can do the thing that we all have been pledged to do when we were elected to the offices that we are privileged to hold, and this is to serve the constituents we represent and to serve the beloved nation of which we are privileged to be citizens.

Thank you very much.

TRIBUTE TO SENATOR METCALF

Mr. JACKSON. Mr. President, at its first business meeting of the year on Wednesday, the Committee on Energy and Natural Resources adopted a resolution paying tribute to Senator Metcalf, who served as a member of the committee for 13 years.

I ask unanimous consent that this resolution be printed in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION

Whereas, Lee Metcalf served with great distinction as a United States Senator from Montana from 1961 to 1978; and

Whereas, Senator Metcalf was for 13 years a member of the Committee on Energy and Natural Resources and its predecessor, the Committee on Interior and Insular Affairs; and

Whereas, Senator Metcalf was an outspoken advocate of legislation to encourage responsible management and wise use of the nation's public lands; and

Whereas, Senator Metcalf was instrumental in the efforts of this Committee to preserve the nation's wilderness areas and other natural resources; and

Whereas, Senator Metcalf led the long fight to protect the environment from the impact of surface mining; and

Whereas, Senator Metcalf's dedication to the work of this Committee and his many legislative achievements will be long remembered: Now, therefore, be it

Resolved, That the members of the Committee on Energy and Natural Resources record with profound sorrow the death of Lee Metcalf on January 12, 1978 and convey their deepest sympathies to his family and friends in Montana and throughout the country.

TRIBUTE TO SENATOR LEE METCALF

Mr. BUMPERS. Mr. President, I rise to express my distress at the passing of the senior Senator from Montana, my good friend Lee Metcalf. Lee served a quarter of a century in Congress and would have completed three terms in the Senate had he lived until 1979. Other Senators have been better known to the general public on a national basis, but none pursued his calling with more singleness of heart and devotion to the general good. Lee Metcalf knew full well the distinction between the public interest and a special interest, and no one ever doubted that he was firmly on the side of the public. He defended the consumer, the individual shareholder, the utility ratepayer with constancy and skill.

I had not known Senator Metcalf before coming here in 1975, but I was fortunate enough to be assigned to the Committee on Interior and Insular Affairs, now reincarnated as the Committee on Energy and Natural Resources, of which he was a valued senior member. I soon grew to like and respect him as a source of knowledge and as a man. He was uniformly kind and gentle in his bearing toward others, especially staff members. And yet he could be emphatic and vehement in defense of high principle when the circumstances demanded it.

As chairman of the Subcommittee on Public Lands, he took a sustained interest in a number of vital natural-resource issues, including deep seabed mining, the coal-slurry pipeline, surface mining of coal, and the disposition and management of public lands. All these issues, though not so glamorous as some of the great questions that command national attention, are central to the future of this country, and Lee Metcalf never forgot it.

I also became accustomed to relying on his encyclopedic legal knowledge. Senator Metcalf had served a 6-year term as an associate justice of the Supreme Court of Montana before coming to the House of Representatives, and his colleagues constantly called on him to answer complex legal questions that arose in the course of the Energy Committee's deliberations. A number of times a legal issue would arise when Senator Metcalf was absent from the committee on other duties, and almost invariably some member would say, "Let's wait and see what Lee thinks about it."

Mr. President, we will all miss Lee Metcalf. Mrs. Bumpers joins me in offering our sincerest sympathy to Mrs. Metcalf and her family.

TRIBUTE TO LEE METCALF

Mr. BENTSEN. Mr. President, I would like to join my colleagues in paying tribute to the career and accomplishments of Senator Lee Metcalf.

For a generation Lee Metcalf represented the people of Montana in Congress; he represented them honestly, effectively, and courageously. I can think of no finer tribute for one who has devoted his life to public service.

We in the Senate join Lee Metcalf's family and constituents in mourning his passing and in paying homage to the excellence that was the hallmark of his distinguished career.

Throughout his service in the House of Representatives and the Senate, Lee Metcalf was known as a man of principle and dedication, a legislator who shunned the path of least resistance and stood up for what he believed was right for the people of America.

There is a tendency to attach labels to Senators, and Lee Metcalf wore his label, the Last of the Western Populists, with pride and dignity. We who knew and worked with Senator Metcalf, however, distinguished him not by his label but by his attributes of talent, dedication, and fairness.

Senator Metcalf's presence, his wisdom and experience, will be sorely missed in the Senate of the United States. I extend my sympathy to Senator Metcalf's family and join their sorrow at the death of a man who fulfilled the highest standards of representative government.

TRIBUTE TO SENATOR HUBERT H. HUMPHREY

Mr. BUMPERS. Mr. President, I rise to give voice to my sorrow and sense of loss at the death of the distinguished senior Senator from Minnesota, Mr. Humphrey. Hubert Humphrey was a great public figure, in the front rank of those who served in this Chamber. He was also my friend. His desk during the 1st session of the 95th Congress was right across the aisle from mine, and I miss him.

Mr. President, volumes have been and will be written, and deservedly so, about Hubert's public career and service. In common with many great men—I need mention only Abraham Lincoln and Franklin D. Roosevelt—he lost his first race for public office. Undaunted, he went on to impressive achievements as mayor, Senator, Vice President, and Deputy President pro tempore of the Senate. These achievements are well known, and my recitation of them here would add little. There are a couple of impressions that come to mind, though, that I would like to share with my colleagues.

Our friend and former colleague, the Vice President, FRITZ MONDALE, used a passage from Shakespeare's "Henry V." to describe Hubert's heart. A good heart, he said, does not grow old or change. It remains constant, and certainly the heart of Hubert Humphrey was constant

in devotion and enthusiasm. The reference to King Henry reminded me that it was on October 25, 1977, that Hubert returned to a Senate Chamber packed with well-wishers and applauding friends.

Now it happens, Mr. President, that October 25, 1977, was the 462d anniversary of the Battle of Agincourt, in which the English under Henry V won such a famous victory. Shakespeare tells us in the same play that the King went about the camp the night before the battle, mingling with his troops, even the common soldiers, and encouraging them. As it turned out, this "little touch of Harry in the night" was just what they needed. That was what Hubert Humphrey meant to the Senate. Time and again when we were going astray amid the brambles of some legislative conflict, Hubert would recall us to ourselves. His eloquence, his personal force, his evident concern for others, his deep knowledge of so many subjects, would get us back on the track of sound deliberation. We needed "a little touch of Hubert in the night," and we got it.

Another thing the Vice President said struck me with particular force. "He taught us how to live," he said, "and finally, he taught us how to die," a lesson, Mr. President, that all must learn, whether well or ill. Hubert lived under sentence of death for years. He knew he had cancer and yet he pressed on despite the weight that such knowledge must have been. Even after he had been classified as "terminal," that chilling and distasteful term, he knew he was still alive and functioning and capable of much good. In the last months of his life he refined the Humphrey-Hawkins bill, got Joe Califano to give a helping hand to the Reverend Jesse Jackson's PUSH program, and, 4 days before his death, called Richard Nixon to wish him a happy 65th birthday. Hubert was alive, and he reveled in it. Whatever his hand found to do, he did with all his might. He knew that we all go down to the dust, yet even at the grave he sang his song.

Mr. President, mortality afflicts us all. The question is not whether to die, but only how and when. Hubert's condition in his last months differed from all of ours only in being more pointed and focused. We all have much to learn from his conduct and example. We must learn that persons who are said to be in so-called terminal illness are nonetheless still persons, able in many cases to live and function with great effectiveness. We must learn also, in our own lives, to face misfortune or disease not with bravado but with courage, accepting them as part of life. And finally we must learn that joy and affirmation are not empty and foolish gestures. They are, as Hubert taught us, the only way to live.

Mr. President, to MURIEL and all the family, Mrs. Bumpers and I send our love.

HUBERT HUMPHREY EULOGY

Mr. BENTSEN. Mr. President, for the past 30 years, Hubert Humphrey has been a compelling factor in the American political experience. With his death we have lost a moral and political mentor, a symbol of what is right and decent about our Nation.

Senator Humphrey, perhaps more than any political figure since Franklin Roosevelt, touched the heart of every American. His death gives us occasion to reflect, to feel with our hearts, the attributes of the man and the goodness of a country that could produce such a man.

It is significant that our friend has been mourned with a song, with "God Bless America." Senator Humphrey made us feel good about America, about each other, and that is precisely what he set out to do. In death, as in life, he has been an inspiration to the people of this country.

As we consider what Hubert Humphrey meant to America, we focus not on his enormous legislative and policy achievements of three decades, but on his compassion, his abiding sense of fairness, and his cheerful determination to do what was right for the country. Senator Humphrey believed in the American dream before it was fashionable to dream. He remained committed to his vision of America when others were in despair.

As a Senator from Minnesota who had the Nation as his constituency, Hubert Humphrey demonstrated a moral and political courage, a constancy of purpose, and a commitment to his ideals that set him apart and earned for him the respect and affection of all Americans.

I worked with Hubert Humphrey as a colleague. I knew him as a friend. I have preceded him on the podium and paid the price for his wit and eloquence. He was a man of conviction, integrity, and compassion.

He was my friend.

HUBERT H. HUMPHREY

Mr. RIBICOFF. Mr. President, there are rare moments in the life of a nation when the death of one man provokes a deep and profound sense of loss, when all of us can come together in sorrow at his suffering and still take pride in his accomplishments and agree that this man was great and that he was a reflection of what America is and yet aspires to be. Such a man was Hubert H. Humphrey and such a moment of national awareness occurred with his death.

He was decent, he was fair, he was compassionate, he was courageous and, a remarkably innovative and brilliant 30-year career, he brought to public debate those issues and problems that struck at the very heart of our country.

When he saw injustice, he spoke out against it—and then he fashioned programs, recommended policies and wrote legislation to rectify that injustice.

He led by example, action, and moral persuasion. He reminded the American people of their own most cherished values. When those values were not being lived up to, he reminded us of that too. The result was that the people acted and, followed Hubert Humphrey's lead. They did the right things.

As a young and forceful mayor of Minneapolis, he came to the Democratic National Convention in 1948 and pointed out to his Party and his Nation that there was no way to reconcile our belief in equal opportunity with a system that excluded black people.

Enthusiastically at times, reluctantly at other times, the Nation met the challenge posed by Hubert Humphrey in 1948 and the civil rights movement moved forward. That was not Hubert Humphrey's greatest victory—he won on too many historic issues to say which achievement was his greatest—but this accomplishment did set the moral tone that was to characterize his career in national affairs.

The Humphrey record will not soon be equaled. On virtually every issue of national and international consequence that has faced America over the last three decades, Hubert Humphrey has been in the forefront, fighting for what he felt was right—and inevitably being right.

If there is one exception to that remarkable record, it was in 1968 when, as Vice President of the United States and the Democratic nominee for President, he tried, and failed, to resolve the tragic rupture in the Democratic Party, and in the Nation, over the Vietnam war. Hubert Humphrey lost the election because of it. But he came so very close to winning. I believe that he would have been elected President had it not been for the war issue. How different the course of public events might have been had he won.

But Hubert Humphrey was not one to look back in regret. It was his nature to move forward. The people of Minnesota returned him to the Senate and he continued his fight for what was right, pursuing those goals which demonstrated the true values of the American people.

As a Senator, Hubert Humphrey at the end of his life could look back on a legacy of achievements that included his major role in the passage of the 1964 Civil Rights Act, the initial concept of the Peace Corps, creation of the food-for-peace programs, establishment of the U.S. Arms Control and Disarmament Agency, and his early advocacy of the nuclear test ban treaty.

Hubert Humphrey was a good Vice President. He accepted a job that few men have ever liked. I have known every Vice President since Alben Barkley and I have yet to meet a Vice President who was especially happy in that post. But Hubert Humphrey was not a man to brood and complain. He made the most of that job and worked hard at it. For example, the years 1965 through 1968, the years of the Humphrey Vice Presidency, were extremely critical to the Nation's space program. As Vice President, Hubert Humphrey was Chairman of the National Aeronautics and Space Council. For all his successes, campaigns, and advocacies, Hubert Humphrey had not been particularly identified with promoting the benefits of space exploration. But he took to this new assignment with characteristic enthusiasm. He became an outspoken, effective, and knowledgeable salesman for the space program.

It was during his Vice Presidency that NASA enjoyed its most historic engineering successes in Project Gemini—and, tragically, it was also at this time

that NASA suffered its worst setback when on January 27, 1967, the three-man crew preparing for the first Apollo manned flight died in a spacecraft fire on launch pad 34 at Cape Kennedy.

The United States did not fly another manned flight for 2 years. The space program was in disarray, its goals and methods questioned and criticized from all sides. Strong leadership was called for. Vice President Humphrey, as Chairman of the Space Council, provided much of the leadership required to assure the American people that the space program was still viable, that we had to continue, that the lessons learned from that deathly fire would make our space program better than ever. History proved Vice President Humphrey and others who suffered through that difficult period correct.

The occasion of that fire on pad 34 also provided an insight into the kind of extraordinarily compassionate human being that Hubert Humphrey was. Two of the members of the Apollo crew—Gus Grissom and Roger Chaffee—were to be buried at Arlington National Cemetery in Washington. Ed White was to be buried at West Point.

The night before the funeral, there was a gathering at a Washington hotel where the Nation's space leaders, many space agency employees who had been close to the Apollo project and NASA contractors came to pay their respects to the families of the fallen astronauts. It was a kind of wake, a very personal occasion for men and women who, along with the bereaved families, were in doubt as to whether or not this Government and Nation would go forward with a program they all believed in deeply.

Vice President Humphrey came to the gathering and with tears in his eyes talked sympathetically and reassuringly with the families and then, with the confidence only of a man of his stature could inspire, patiently made his way through the gathering, assuring the men and women who had come together that night that the astronauts had not died in vain, that manned space flights would continue. It was a genuine, heartfelt gesture on the Vice President's part, typically Hubert Humphrey. He cared about people and he cared about worthwhile Government programs and so often throughout his career he was able to combine the two concerns.

I know I speak for all Senators when I say how very much we will miss Hubert Humphrey. He was a friend and colleague and very much a Senator's Senator. He had sought the Presidency more than once and had served a term as Vice President. But Hubert loved the Senate. And the Senate will not be the same without him.

Perhaps the best words I have read to describe Hubert Humphrey were those from Hubert himself. Senator ANDERSON quoted them on Tuesday and I would like to repeat them as well. Hubert Humphrey said this about himself:

I have enjoyed my life, its disappointments outweighed by its pleasures. I have loved my country in a way that some people consider sentimental and out of style. I still do, and I remain an optimist, with joy, and without apology, about this country and about the American experiment in democracy.

Mr. President, I ask unanimous consent that a column from the Washington Post of January 18, 1978 by David Broder and an article by Max Kampelman from the New York Times of January 18, 1978 be printed in the RECORD. Both articles capture the spirit of Hubert Humphrey.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

THE MAN WHO WROUGHT VICTORY FROM DEFEAT

(By David S. Broder)

Few of the millions watching the memorial service for Hubert Humphrey in the Capitol Rotunda on Sunday probably understood President Carter's apology for the "harsh words" he spoke in the 1976 campaign about the senator from Minnesota, but it was a gracious and honorable thing for him to do.

He had called Humphrey "a chronic loser," back then, when he expected the former Vice President to try once more for the party nomination. He regretted—and apologized for—the statement almost at once, but it was clear that it had been weighing on his conscience. For through the kindness of fate, as he said, Jimmy Carter had a year as President to learn—as many others had done before—what a forgiving and inspiring ally and teacher and friend Hubert Humphrey could be.

In reflecting on Humphrey's career, as all of us have been doing, I found myself recalling him, not in his moments of triumph, but in the hours of defeat. To tell the truth, there were many of them.

At the first convention I ever covered, in 1956, Humphrey lost the vice-presidential nomination—one he thought he had been promised by Adlai Stevenson—to Estes Kefauver. In West Virginia in 1960, he lost the presidential nomination to John Kennedy. And no one who ever read it will forget Mary McGrory's portrait of Humphrey that West Virginia primary night—first consoling the weeping folk singer who was strumming one last chorus of "I'm Gonna Vote for Hubert Humphrey," then, in turn, being embraced and comforted by Robert Kennedy, the doomed brother of that night's doomed winner.

In 1968 he lost the presidency to Richard Nixon—whose plaintive presence as the returned exile at Sundays' service added yet another note to irony to the saga of Humphrey's "defeats."

In 1972, he lost the nomination to George McGovern. Everyone who was with him will remember Humphrey on that long journey back to Washington the day after his California primary defeat ended what he knew was his last chance for the White House. Sleepless, exhausted, he roamed up and down the aisle, raising the spirits of everyone with his recollections of the foibles and fumbles of the previous six months of grueling effort.

He coaxed Michele Clark of CBS—who was soon to die tragically in an airplane crash—to play for the 50th time the treasured tape recording of the fast-tongued Humphrey getting hopelessly tangled in the words "Bedford-Stuyvesant" during the Florida primary. As he spluttered along like Donald Duck on the tape, Humphrey laughed until the tears rolled down his cheeks.

Long before he mastered the art of facing defeat in his pursuit of the presidency, Humphrey taught the Senate the importance of fighting a losing cause. As Nelson Polsby, one of the legion of political scientists who loved their colleague from Minnesota, has pointed out, Humphrey, virtually invented the modern senator. It was he who linked the previously private world of the Senate club to the great forces of mass politics by using the Senate rituals—bill introductions, committee hearings and endless floor debate—as weapons for mobilizing national constituencies for civil rights, Medicare, nuclear disarmament and dozens of other causes. Those Humphrey bills were defeated session after session, but ultimately passed, monuments to the tenacity and skill of this "loser."

But his heritage is not just in laws. It is also in people and—it is important to say—in a political party. The Minnesota Democratic-Farmer-Labor Party, the DFL, has been for the last 30 years, largely through the inspiration of Hubert Humphrey, the nation's greatest resource of honest, effective and visionary political leadership. McCarthys and Mondales, Freemans and Frasers, Hellers and Hofstedes, Naftalins and Perpiches, Sabos and Spannauses, Blatniks and Rolvaags and Karths and, oh, so many Andersons—men and women, both—they are all, in their highly individual ways, extensions of their great teacher.

He built that party in the 1940s on the foundation of his own campaigns for mayor of Minneapolis, characteristically losing before he won. And then, late in his life, after he had been as close as a man can get to the top of American politics, he went back to Minnesota, in defeat, and rebuilt it again from the grass roots, healing the wounds of a bitter 1966 gubernatorial primary and his own divisive battle with Gene McCarthy in the 1968 precinct caucuses, and leading it to its greatest victory ever in 1970.

I remember Humphrey one night in that 1970 campaign, at a rally in Alexandria, Minn., for congressional candidates Bob Bergland (now Secretary of Agriculture) and Rick Nolan. It was the end of a long day, and after Humphrey and the others had spoken, Muriel Humphrey tried to get him out of the hall and onto the plane back to Minneapolis for a night's sleep.

But Humphrey was having none of it. Instead he grabbed Wendell Anderson, then the candidate for governor and now the senior senator, and all the other candidates, and for more than an hour he kept them beside him in line, shaking hands and talking personally to every one of the 500 or 600 people who had come to the rally.

He was thinking, as usual, about others and about the future, especially the future of 26-year-old Rick Nolan. "Don't worry about me. My race is fine," Humphrey told each of the voters, affirming what they all knew to be true about his easy victory in that year's Senate campaign. "Help Wendell and Bob and Rick and the rest of these fellows."

Later, on the plane, he told me, "Rick Nolan may not make it this time, but he can win in 1972 if those people stick with him." As prophesied, Nolan lost in 1970 but won his House seat two years later. He is there now—in his third term, at 34, just half Humphrey's age and beginning to fulfill the hopes the DFL has for him—another part of the human heritage that ensures Hubert Humprey, "the chronic loser," will have a larger place in history than many of those who defeated him along the way.

WHY THEY TRIED TO GET HUMPHREY TO WEAR GLASSES

(By Max M. Kampelman)

WASHINGTON.—A few anecdotes from 30 years of close personal and political friendship with Hubert H. Humphrey.

Those days when Hubert was Mayor of Minneapolis were full of excitement. I watched from a distance, but would occasionally be drawn into the picture. Hubert had met some of the civil rights experts from Fisk University. He was troubled by an article that Carey McWilliams had written that

appeared at about the same time he became Mayor, calling Minneapolis the capital of anti-Semitism in America. There were very few blacks and not many Jews in our city, and there was a problem.

Fisk urged a community self-survey, with every part of our city looking at itself in the mirror.

Hubert explained: "If they like what they see in the mirror when they compare it to their American ideals, fine. If not, they will want to bring about the change." He was right.

Minneapolis became the first city to create a Fair Employment Practices Commission. It seemed as if everybody—trade unionists, academicians, bankers, industrialists, merchants—was involved in one or another committee.

One day when I went to City Hall there was a meeting of all the tavern owners in the city and many of their wives. Hubert wanted them to go to the city council and ask for pay increases for the police, the funds to come out of increased license fees that they would pay.

"I know you are paying off policemen now," he charged. "This must stop. Don't you wives want your husbands to be involved in a legitimate business that doesn't bribe policemen?"

He promised to clean up the city and the police force. He promised that he would end a police practice designed to entrap tavern owners into law violations. Miracle of miracles, they voted to cooperate!

I recall a train ride from Philadelphia to Washington after a speech. Hubert's father had just died. He was sad and troubled. "I could really never go seriously wrong," he explained, "because if I did and it appeared in the newspapers, Dad would be on the phone giving me hell. He was always watching what I was doing."

What concerned him was whether he would still be as true to his ideals now that his father was not there. About a year or so later, I reminded him of that conversation and asked him what he had found. "Dad is still looking over my shoulder," he responded.

One of Hubert's greatest irritations was constantly being reminded that he talked too much. He knew that. The way he handled the irritation was by poking fun at himself, but he never did fully understand the criticism or appreciate it.

Hubert grew up in the tradition where political speechmaking might possibly take up an entire afternoon in the town square. This was before television. It was not only good entertainment, but it was also patriotic. How else, he felt, could there be understanding of issues by the electorate? The formula was simple: "You tell them what you're going to tell them; you then tell them; and then you tell them what you told them."

To understand Hubert Humphrey, you have to understand two pervasive characteristics. The first is faith. And that includes God and human brotherhood. What kind of God, what He looks like, where He is—that is unimportant. What is important is that there is a God and a set of values, and that we must all be brothers and sisters to one another in our personal relationships and in our societal relationships. This explains why Hubert was so forgiving of people who deserved less from him.

The second point to remember is that Hubert was a teacher. He had to explain so that everybody understood. Political democracy rests on informed awareness by the electorate, and that requires teaching. He knew that when he taught under the W.P.A. in Minnesota. He never stopped teaching, and that, of course, also means talking.

Is this old-fashioned? Of course it is, and he always knew it. There was a constant rebellion against turning himself into someone he was not, or into something he was not comfortable with, simply because it would be better television or better politics.

How often I heard the refrain of advisers, "Forget about the audience in front of you; think only about the TV cameras." But he could never forget the audience in front of him. They were there in the flesh, his friends, to be persuaded. These people he could see and the television audience he could not.

One day The New York Times caught a candid photograph of Hubert at a session of the Foreign Relations Committee. It was a great picture. He looked thoughtful and it was always so difficult to get a good picture of Hubert published that didn't have him talking. I looked carefully. He wore glasses in this photo. With the glasses, he looked studious. It's people who read and think who wear glasses. Here was a way to undercut the criticism that he talked too much. As a studious man, he had a great deal to say. Furthermore, audience attention could be drawn to the glasses, and not to the protruding chin or to the small moving mouth.

I had it! Hubert was among the wisest and most truly profound of men, and yet the public did not know it. This was our solution. I quickly went to Humphrey. The idea made sense to him, but he remained skeptical. "It isn't as if you don't need glasses," I argued. "This is not artificial. You do need them. Why don't you wear them all the time instead of just when you are doing close work?" No promises from him, and no performance.

I didn't give up. In 1968, preparing for the Democratic Party convention, we got the assistance of Dr. Ernest Dichter, who volunteered and said he would like to help. This was the gifted man who made a good living telling toothpaste companies what color they should use on their packages to help their sales.

I presented the problem to him. He was skeptical, too, but agreed to make a survey. He used a photo of Hubert with glasses and one without. There was no name identification. "What kind of a man do you think this is?" was the question. After some weeks, a surprised Dichter came in and said, "You were right." The man with the glasses elicited a much more positive response than the man without. Here was the proof!

We presented it to the Vice President. By now, he was using his glasses somewhat more frequently, but still not on television and not for photographs. Why, I don't know why. But I think part of it was that it might appear to be manipulative and he would not be a party to such a manipulation for political gain. People would have to accept him for what he was or not at all.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

CRIMINAL CODE REFORM ACT OF 1977

The Senate continued with the consideration of S. 1437.

Mr. ROBERT C. BYRD. Mr. President, what is the pending business now before the Senate?

The PRESIDING OFFICER. S. 1437.

Mr. ROBERT C. BYRD. The unfinished amendment.

The PRESIDING OFFICER. The amendment on page 76, lines 19 through 24.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR EAGLETON ON TUESDAY, JANUARY 31, 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Tuesday, January 31, after the two leaders or their designees have been recognized under the standing order, Mr. EAGLETON be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONSIDERATION OF CERTAIN MEASURES ON THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, this request having been cleared with the minority, I ask unanimous consent that the Senate proceed to the consideration of the following calendar orders numbered 562 through 569.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORITY FOR ASSISTANT SECRETARY OF THE TREASURY TO SERVE AS A MEMBER OF THE LIBRARY OF CONGRESS TRUST FUND BOARD

The bill (S. 2220) to authorize the Secretary of the Treasury to designate an Assistant Secretary to serve in his place as a member of the Library of Congress Trust Fund Board, was ordered to be engrossed for a third reading, read the third time and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first paragraph of the first section of the Act entitled "An Act to create a Library of Congress Trust Fund Board, and for other purposes", approved March 3, 1925 (2 U.S.C. 154), is amended by inserting after "Secretary of the Treasury" the following: "(or an Assistant Secretary designated in writing by the Secretary of the Treasury)".

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–616), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

EXCERPT

S. 2220 would amend the Library of Congress Trust Fund Board Act, approved March 3, 1925 (2 U.S.C. 154), by authorizing the Secretary of the Treasury to designate an Assistant Secretary to serve in his place on the Library of Congress Trust Fund Board.

At a recent meeting of the Board, the membership recommended that the act of 1925 be amended to provide for this authority, which would greatly facilitate operations of the Board.

The membership of the Board consists of the Secretary of the Treasury, the chairman of the Joint Committee on the Library, the Librarian of Congress, and two persons appointed by the President.

A letter requesting enactment of this legislation, addressed to Senator Howard W. Cannon, chairman, Committee on Rules and Administration, by Dr. Daniel J. Boorstin, Librarian of Congress, is as follows:

THE LIBRARIAN OF CONGRESS,
Washington, D.C., October 3, 1977.

Hon. HOWARD W. CANNON,
U.S. Senate.

DEAR SENATOR CANNON: At the last meeting of the Library of Congress Trust Board two major changes were decided upon:

(1) To make the Librarian of Congress Chairman of the Board; this was done at the meeting by amending the bylaws.

(2) To permit the Secretary of the Treasury to designate an Assistant Secretary to serve in his place on the Board; this will require a slight amendment to the Library of Congress Trust Fund Board Act. Both the Treasury and the Library have examined this act, as previously amended, and feel that no further modifications are necessary.

I shall greatly appreciate it therefore if you would introduce the attached legislation, which would greatly facilitate operations of the Board.

We realize that it is too late for action in this session, but we hope it can be taken care of next year. Many thanks.

All the best.

Yours,

DANIEL J. BOORSTIN,
The Librarian of Congress.

SUPPLEMENTAL EXPENDITURES BY THE SPECIAL COMMITTEE ON AGING

The resolution (S. Res. 288) authorizing supplemental expenditures by the Special Committee on Aging for inquiries and investigations, was considered and agreed to, as follows:

Resolved, That section 2 of S. Res. 147, Ninety-fifth Congress, agreed to June 14, 1977, is amended by striking out "$407,000" and inserting in lieu thereof "$442,000".

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–617), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

EXCERPT

Senate Resolution 288 would amend the expenditure-authorization resolution of the Special Committee on Aging (S. Res. 147, 95th Cong., agreed to June 14, 1977) by increasing by $35,000—from $407,000 to $442,000—funds available to the special committee through February 28, 1978, for inquiries and investigations.

The $35,000 request would be apportioned as follows:

$12,000 for raising of salaries for selected members of the Minority and Majority staffs, in accordance with the Order of the President Pro Tempore, implementing the provisions of the Federal Pay Comparability Act of 1970, authorizing a 7.05 percent increase effective October 1, 1977;

$10,000 for additional expenses of investigative activities related to nursing home operations in three States; and

$13,000 for field hearings and other Committee activities related to inquiries into "The Nation's Rural Elderly," "Treatment of Indians under the Older Americans Act and other Federal Programs," "The Graying of Nations: Implications," and "Senior Centers and the Older Americans Act."

Letters in support of Senate Resolution 288 addressed to Senator Howard W. Cannon, chairman of the Committee on Rules and Administration, by Senator Frank Church, chairman of the Special Committee on Aging (with the concurrence of Senator Pete V. Domenici, ranking minority member), and Senator Dennis DeConcini, are as follows:

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C. October 7, 1977.

Hon. HOWARD W. CANNON,
Chairman, Senate Committee on Rules and Administration, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Today I introduced—along with Senator Domenici—Senate Resolution 288, asking $35,000 in additional funding for operations of the Senate Special Committee on Aging. I would appreciate early attention by your committee in order for this committee to maintain a full schedule of activities for the funding period which ends in February.

The funds are requested for the following reasons:

$12,000 for raising of salaries for selected members of the minority and majority staffs, in accordance with the Order of the President Pro Tempore, implementing the provisions of the Federal Pay Comparability Act of 1970, authorizing a 7.05 percent increase effective October 1, 1977.

$10,000 for additional expenses of investigative activities related to nursing home operations in three States.

$13,000 for field hearings and other committee activites related to inquires into "The Nation's Rural Elderly," "Treatment of Indians under the Older Americans Act and other Federal Programs," "The Graying of Nations: Implications," and "Senior Centers and the Older Americans Act."

I would also like to thank you and your staff for the many courtesies extended within the last few months, and specifically your willingness to stand by when prompt action was needed to authorize travel for members of the Capitol Hill Police Force in conjunction with the issuance of subpenas for investigative purposes.

Senator Domenici has reviewed the request for additional funding, and he concurs.

With best wishes,

Sincerely,

FRANK CHURCH,
Chairman.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., November 29, 1977.

Hon HOWARD W. CANNON,
Rules and Administration Committee, U.S. Senate, Washington, D.C.

DEAR HOWARD: Senators Church and Domenici recently introduced a resolution asking for $35,000 in additional funding for the operations of the Special Committee on Aging.

The funds were requested in order to carry on the work of the committee with regard to hearings held both in the field and in Washington, as well as for extensive field investigations and other research. Most of the work accomplished this year will be helpful as the Senate considers amendments to the Older American's Act next year.

I would like to add my support to the request and urge consideration of this resolution.

Sincerely,

DENNIS DECONCINI,
U.S. Senator.

The response to Senator Hatfield's request for "a more detailed report on what modifications the Special Committee on Aging made in its original budget request of $432,000 after the Rules Committee and the Senate reduced it to $407,000 in June 1977" is expressed in a joint letter from Senator Church and Senator Domenici, which letter is as follows:

U. S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C., October 18, 1977.

Hon. HOWARD W. CANNON:
Chairman, Committee on Rules and Administration, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Senate Committee on Rules and Administration began deliberations last Wednesday on Senate Resolution 288, which would authorize an additional $35,000 for operations by the Senate Special Committee on Aging through February 1978. We would like to thank you and the committee for prompt consideration of the measure.

At the meeting, Senator Hatfield requested a more detailed report on the reasons for seeking additional funding and the steps taken by the Special Committee on Aging to keep expenditures in line with the Rules Committee's limitations.

The following actions have been taken to bring Committee expenditures down to the $407,000 funding level set by the Rules Committee ($357,000 approved in regular budget, $50,000 approved for special investigations):

Investigative staff was reduced after extensive operations in three States. A General Accounting Office specialist on this committee's payroll has returned to GAO. A temporary staff person engaged to work through recent hearings has left the Staff, as have two other temporary workers.

The $20,000 allotted for consultants in the budget was seen as a logical item to reduce. Therefore, only minimal use has been made of consultants. No use at all will be made of the $1,000 provided for training of professional staff.

Even before approval of the June budget, majority staff had been reduced by one professional staff member, and the majority clerical staff had been reduced by three.

Despite our efforts to keep costs within the June authorization by the Rules Committee, there are compelling reasons for requesting additional funds at this time in order to fulfill our responsibilities for dealing with matters which, in our view, cannot be delayed until the next funding period.

As briefly mentioned in our letter of October 7 to your committee, the $35,000 in additional funding had three major divisions:

$12,000 was to be used for raising of salaries for selected members of the Committee staff, in accordance with the Order of the President Pro Tempore, implementing the provisions of the Federal Pay Comparability Act of 1970, authorizing a 7.05 percent increase effective October 1, 1977.

The full increase, as was mentioned at your meeting on October 12, was not applied to the three highest-salaried Majority employees.

$10,000 is to be used for additional expenses of investigative activities related to nursing home operations in three States. This request is made because intensive field work in California, Hawaii, and Colorado during July and August did not produce conclusive evidence of alleged political influence on official actions related to regulation of nursing homes. For full examination of the situation in those three States, additional funding is necessary. In addition, the investigation of nursing home chain opera-

tions is continuing and will soon require intensive examination of information already on hand as well as other data which must be collected.

We are sure that you recognize the difficulties in arriving at precise estimates of investigative costs, particularly in view of the effort to show a pattern of political influence. Field work of this kind often involves unforeseen additional tasks.

We feel it is important to continue these investigative activities based upon the need for continuing attention to costly waste, fraud, and abuse in the medicare and medicaid programs, with special attention to the relatively unexplored area of political influence.

$13,000 for field hearings and other committee activities related to inquiries into "The Nation's Rural Elderly," "Treatment of Indians Under the Older Americans Act and other Federal Programs," "The Graying of Nations: Implications," and "Senior Centers and the Older Americans Act."

The hearings on "The Nation's Rural Elderly" represent an effort by this committee to continue and conclude hearings and other committee activities related to that subject. Hearings in Texas, New Mexico, and Arizona are among those which will be useful in providing information about rural issues in those States, which have received very little attention in prior years by this committee. In addition, the Southwest hearings would also provide an opportunity to take first-hand testimony on the subject of "Treatment of Indians Under the Older Americans Act and Other Federal Programs." Testimony on rural issues and on the treatment of elderly Indians are directly related to forthcoming congressional deliberations on extension of the Older Americans Act. Additional "rural" hearings are contemplated in Illinois, Indiana and Florida. Our Committee is working in conjunction with the Subcommittee on Aging of the Committee on Human Resources to assure that adequate attention is given to these and other matters before that subcommittee's legislative hearings begin toward the end of this year.

The same is true of the hearing on October 18 on "Senior Centers and the Older Americans Act." This is a one-day hearing with a minimum number of witnesses, preceded by extensive efforts to gather information on senior center operations. We believe that this hearing will also provide very useful information related to extension of the Older Americans Act. Again, it has been planned in conjunction with the Subcommittee on Aging.

The hearing on "The Graying of Nations: Implications" is to be held in conjunction with the visit of representatives from nine other nations to the U.S. National Institute on Aging in November. These visitors are experts who can provide international comparisons on matters of considerable urgency at a time when all nations are faced by economic and social consequences related to the "aging" of populations. A one-day hearing in Washington is planned; our committee is not paying travel expenses for the foreign visitors.

As is the case in other hearings, it was not possible in June, when our resolution was under consideration, to make detailed plans.

We did, however, have an informed impression of our needs; and it was for this reason that we asked for $25,000 more than later authorized by the Rules Committee.

Our regular budget request of $432,000 at that time was in strict compliance with the amount already authorized by the Rules Committee for the March-June period. We multipled that sum, representing one-third of the year, by two in order to provide for the following two-thirds of the year. We thought that we were abiding by Rules Committee guidelines and thus were surprised at the reduction of $25,000. We did reduce expenditures to make up the difference in the budget amount but we have reached the conclusion that additional funding is now necessary for this committee to perform the work described above.

We would like to make a few other observations, Mr. Chairman:

In further response to the questions we wish to state that no committee hearing is conducted without a Senator being present. Committee memebrs, we should add, have adopted a policy of meeting at least four times annually to discuss committee operations.

Committee members, acting largely upon information obtained through committee operations, have had an unusually effective legislative record of achievement during 1977. A list of these accomplishments until the August recess is attached; an updated version will be forwarded to you at the end of the session.

We again point out that the Committee on Aging, unlike all other permanent committees, is not provided with core amounts for operations, salaries, and office expenses. The budget submitted to the Rules Committee, therefore, reflects all of our expenses.

Another reason for the request of additional funding is that we felt it mandatory to order an investigation when we learned of the eviction of elderly residents at the International Hotel, San Francisco, in August. We felt that the incident is closely related to Federal policies and programs related to urban development and its impact on older persons. Our investigation indicates the need for intensive attention to these matters, but will need time to plan these activities, which will probably take place in the funding period beginning next March. We give this as an example of the unexpected and immediate situation which so often arises in aging.

We would also like to report that the number of printing assistants provided by Government Printing Office (at no outlay from committee payroll) has been reduced from three to two.

Once again, Mr. Chairman, we would like to thank the Rules Committee for careful consideration of this and other requests. In particular, we would like to thank the Rules Committee for taking prompt action in August to authorize travel for members of the Capitol Hill Police Force in conjunction with the issuance of subpenas by the Special Committee on Aging and the collection of records for investigative purposes.

Sincerely,

FRANK CHURCH,
Chairman.
PETE V. DOMENICI,
Ranking Minority Member.

SUPPLEMENTAL EXPENDITURES BY THE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

The resolution (S. Res. 291) authorizing supplemental expenditures by the Committee on Agriculture, Nutrition, and Forestry, was considered and agreed to, as follows:

Resolved, That section 2 of S. Res. 144, Ninety-fifth Congress, agreed to June 14 (legislative day, May 18), 1977, is amended by striking out "$300,300" and inserting in lieu thereof "$330,300".

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-618), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

EXCERPT

Senate Resolution 291 would amend Senate Resolution 144, 95th Congress, agreed to June 14, 1977 (the annual expenditure-authorization resolution of the Committee on Agriculture, Nutrition, and Forestry) by increasing by $30,000—from $300,300 to $330,300—funds available to the committee for inquiries and investigations through February 28, 1978.

Excerpts from the Committee on Agriculture, Nutrition, and Forestry report accompanying Senate Resolution 291 (S. Rept. 95-489) are as follows:

In approving Senate Resolution 4, the Senate voted to phase out the Select Committee on Nutrition and Human Needs at the end of 1977. Under this reorganization, the existing Committee on Agriculture and Forestry became the Committee on Agriculture, Nutrition, and Forestry, and the Select Committee on Nutrition and Human Needs was given until December 31, 1977, to complete its work.

On January 1, 1978, the Committee on Agriculture, Nutrition, and Forestry will take on the responsibilities of the Select Committee on Nutrition and Human Needs, which will require some modest staff increases. The amendment to Senate Resolution 144, approved on October 5, 1977, by the Committee on Agriculture, Nutrition, and Forestry for Senate consideration, would provide $30,000 to fund three professional and two clerical staff members for 2 months. This would permit the hiring of three majority and two minority staff members. The Committee on Agriculture, Nutrition, and Forestry proposes to meet its expanded responsibilities with existing staff, supplemented by the additional staff called for in this amendment. In addition, the committee is fortunate enough to have the services of a highly qualified nutritionist, the author of a college text on nutrition. This person is a congressional science fellow who will work for 1 year at no cost to the committee. * * *

The Committee on Agriculture, Nutrition, and Forestry has had legislative jurisdiction over the child nutrition, food stamp, and other nutrition programs, while the Select Committee on Nutrition and Human Needs—which was established in 1968—performed an investigatory and oversight role. The Select Committee on Nutrition and Human Needs is to be commended for alerting the Nation to the existence of hunger among the needy and helping develop a consensus in support of a national food stamp program and expanding the child nutrition programs—which were developed in the Committee on Agriculture, Nutrition, and Forestry.

* * * * *

At the start of this session, and after the passage of Senate Resolution 4, Committee Chairman Talmadge asked Senator McGovern to head a Nutrition Subcommittee under the Committee on Agriculture, Nutrition, and Forestry. This subcommittee is expected to be the focal point for the committee's expanded nutrition effort.

The absorption of the Select Committee on Nutrition and Human Needs into the Committee on Agriculture, Nutrition, and Forestry will result in a combination of the investigatory role of a select committee with the legislative role of a standing committee. The expertise acquired by both committees will result in more effective efforts in the future. Success cannot be gaged by staff size. The Committee on Agriculture, Nutrition, and Forestry will continue to call upon the expertise of other Government agencies without inflating the committee budget. De-

spite the fact that the Committee on Agriculture, Nutrition, and Forestry has one of the smallest staffs of any standing committee in the Congress, it has been able to meet its responsibilities well by a wise utilization of the Congressional Research Service, the General Accounting Office, and the personnel of executive branch agencies. In fact, the committee was recently cited in "Staff" a publication of the House Select Committee on Congressional Operations, as having one of the best oversight operations in the Congress. The article pointed out that the committee was able to accomplish this by extensive use of the General Accounting Office.

Following is a letter dated September 27, 1977, from Senator Talmadge to Senator McGovern relating to the phase out of the Select Committee on Nutrition and Human Needs and the addition of five staff members to the Committee on Agriculture, Nutrition, and Forestry as called for in the proposed amendment to Senate Resolution 144:

U.S. SENATE,
COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY,
Washington, D.C., September 27, 1977.

Hon. GEORGE MCGOVERN,
U.S. Senate,
Washington, D.C.

DEAR GEORGE: As you know, the Select Committee on Nutrition and Human Needs will be terminated on December 31, in accordance with Senate Resolution 4.

When I spoke to you and Senator Dole earlier this year, I expressed a willingness to incorporate a few of the existing staff of the select committee into the staff of the Committee on Agriculture, Nutrition, and Forestry. I indicated that I was willing to go this far in accommodating your desire to keep a significant nutrition effort going.

As you know, the Senate changed the name of our committee to the Committe on Agriculture, Nutrition, and Forestry during the consideration of Senate Resolution 4. In addition, we established a new Subcommittee on Nutrition with you as chairman. As I recall the Senate consideration of Senate Resolution 4, you and Senator Percy agreed that you would not ask for any future extensions of the Select Committee on Nutrition and Human Needs if the Senate would permit an extension of the Select Committee through December 31, 1977.

Since the current session of Congress is drawing to a close, we will need to act promptly on a money resolution that will enable us to place some of your committee staff on the Agriculture Committee payroll on January 1, 1978. In accordance with my agreement to accept two majority and one minority professional staff members, I am also willing to accept two clericals, for a total of five employees. If you will indicate the salaries of the five employees you wish to transfer to the Agriculture Committee payroll, I will introduce a resolution to obtain adequate funds. I will call a short committee meeting off the floor of the Senate this week to report a resolution that can be referred to the Committee on Rules and Administration for action. I am informed by the chairman of the Rules Committee that if we act promptly, it will be possible to consider this resolution before adjournment.

I will be happy to cooperate with you in this transition in any way possible. Certainly, we all know of the invaluable contributions that you have made in the field of food and nutrition programs. All the legislation in this area has, of course, been marked up in the Committee on Agriculture. I believe that the reorganization of the Committee on Agriculture, Nutrition, and Forestry to include a Subcommittee on Nutrition, is a natural result of your leadership in this area; and I believe that this committee structure will enable us to do an even better job in the future on nutrition issues. I think that the staff that I have agreed to accept, together with the other professional resources of our committee, will enable you to do whatever is necessary in the nutrition area.

With every good wish, I am,

Sincerely,

HERMAN E. TALMADGE,
Chairman.

SUPPLEMENTAL EXPENDITURES BY THE COMMITTEE ON ARMED SERVICES

The resolution (S. Res. 314) authorizing supplemental expenditures by the Committee on Armed Services for inquiries and investigations, was considered and agreed to, as follows:

Resolved, That section 2 of S. Res. 142, Ninety-fifth Congress, agreed to June 14, 1977, is further amended by striking out the amounts "$483,700" and "$36,000" and inserting in lieu thereof "$508,700" and "$61,000", respectively.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–619), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

EXCERPT

Senate Resolution 314 would further amend the expenditure-authorization resolution of the Committee on Armed Services (S. Res. 142, agreed to June 14, 1977) by increasing by $25,000—from $483,700 to $508,700—funds available to the committee through February 28, 1978, for inquiries and investigations. The $25,000 increase could be expended for the procurement of consultants, increasing funds available for that purpose from $36,000 to $61,000.

Senate Resolution 297, agreed to October 27, 1977, increased the 1977 expenditure authorization of the committee by $8,700—from $475,000 to $483,700.

The Committee on Armed Services has requested this additional funding "in the event the committee needs to proceed with a consulting contract for a report on certain matters pending with the committee which will require in-depth examination by the committee early in the next session of Congress."

A joint letter in support of Senate Resolution 314 addressed to Senator Howard W. Cannon, chairman of the Committee on Rules and Administration, by Senator John C. Stennis and Senator John Tower, chairman and ranking minority member, respectively, of the Committee on Armed Services, is as follows:

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, D.C., November 1, 1977.

Hon. HOWARD W. CANNON,
Chairman, Committee on Rules and Administration, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Today the Armed Services Committee voted to report to the Senate a resolution authorizing the expenditure of up to $25,000 additional to those funds already authorized by Senate Resolution 142, as amended, for the committee for inquiries and investigations. If actually used these funds would be for consulting services.

These additional funds will be needed in the event the committee needs to proceed with a consulting contract for a report on certain matters pending with the committee which will require in-depth examination by the committee early in the next session of Congress.

I would hope that this meets with the approval of the Committee on Rules and Administration and that favorable consideration could be given to reporting this resolution at an early date.

Sincerely,

JOHN C. STENNIS,
Chairman.
JOHN TOWER,
Ranking Minority Member.

INCREASED ALLOTMENT FOR CONSULTANTS FOR THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

The resolution (S. Res. 339) authorizing increased allotment for consultants for the Committee on Environment and Public Works, was considered and agreed to, as follows:

Resolved, That section 2 of S. Res. 157, first session, Ninety-fifth Congress, agreed to June 14, 1977, is amended by striking "$3,900" and inserting in lieu thereof "$7,000.".

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–620), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

EXCERPT

[To accompany S. Res. 339]

Senate Resolution 339 would amend section 2 of Senate Resolution 157, 95th Congress, agreed to June 14, 1977, as amended (the expenditure-authorization resolution of the Committee on Environment and Public Works), by increasing by $3,100—from $3,900 to $7,900—that portion of the funds authorized for the committee which it could expend for the procurement of individual consultants or organizations thereof. No increase in the committee's authorization of funds ($875,800) would result from this action.

An explanation for the request is expressed in a joint letter addressed to Senator Howard W. Cannon, chairman of the Committee on Rules and Administration, by Senator Jennings Randolph and Senator Robert T. Stafford, chairman and ranking minority member, respectively, of the Committee on Environment and Public Works, which letter is as follows:

U.S. SENATE,
COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS,
Washington, D.C., January 10, 1978.

Hon. HOWARD W. CANNON,
Chairman, Committee on Rules and Administration, Room 305, Russell Building, Washington, D.C.

DEAR MR. CHAIRMAN: When the committee prepared its budget forecast for the remaining eight months of the 1977 resolution year, only $3,900 was allocated for consultants, substantially less than the pro rata amount for the previous year's allocation. This was in line with the committee's efforts to maintain expenditures at levels consistent with the workload anticipated.

Because the need for consultant services was greater than anticipated in connection with the development of environmental legislation before the Congress last Session, as well as oversight activities for the remainder of this resolution year, requirements exceed the forecast.

Senate Resolution 339 increases the amount authorized to be expended for procurement of consultant services by $3,100, to a total of $7,000.

Because of economies practiced in other areas, funds to meet this increased authorization will be transferred from other line items and no authorization of additional funds is required or requested.

Your early approval of this resolution is respectfully requested.

With kind personal regards,

Truly,

JENNINGS RANDOLPH,
Chairman.
ROBERT T. STAFFORD,
Ranking Minority Member.

OZZIE P. PRICE

The resolution (S. Res. 357) to pay a gratuity to Ozzie P. Price, was considered and agreed to, as follows:

Resolved, That the Secertary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Ozzie P. Price, widow of Joseph B. Price, an employee of the Architect of the Capitol assigned to duty in the Senate Office Buildings at the time of his death, a sum equal to six months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PATRICIA M. WELDON

The resolution (S. Res. 358) to pay a gratuity to Patricia M. Weldon, was considered and agreed to, as follows:

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Patricia M. Weldon, daughter of Ruth K. Taylor, an employee of the Senate at the time of her death, a sum equal to three months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEMORIAL TO THE SIGNERS OF THE DECLARATION OF INDEPENDENCE

The Senate proceeded to consider the bill (H.R. 2960) to authorize the Secretary of the Interior to memorialize the 56 signers of the Declaration of Independence in Constitution Gardens in the District of Columbia, which had been reported from the Committee on Rules and Administration with an amendment:

On page 1, line 7, after the comma, insert "with".

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-621), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of this act is to establish a memorial in Constitution Gardens to honor the 56 signers of the Declaration of Independence.

BACKGROUND

Congress authorized the American Revolution Bicentennial Administration to finance its activities through the sale of Bicentennial medals. A surplus remained when the Administration's responsibilities were concluded which the Administration proposed to use for the establishment of a memorial to the 56 signers of the Declaration of Independence. H.R. 2960 permits the expenditure of up to $500,000 for this purpose.

S. 1148, which proposes basically the same type of memorial, was also pending before the Rules Committee but was deferred so that H.R. 2960 could be reported out instead.

A hearing was held in the House by the Subcommittee on Libraries and Memorials on April 29, 1977. Because of the large number of statues and memorials in the Washington, D.C., area, concern was expressed that the memorial not add to the list. Rather, a consensus is that the memorial take an unobstrusive form and serve some functional use if possible.

An expenditure not to exceed $500,000 by the Secretary of the Interior from funds of the American Revolution Bicentennial Administration is authorized by this act. The Congressional Budget Office reports "no appropriation is required for the establishment of the memorial." Therefore, no other funds are authorized.

A letter addressed to Chairman Cannon by Alice M. Rivlin, Director, Congressional Budget Office, is as follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., September 12, 1977.

Hon. HOWARD W. CANNON,
Chairman, Committee on Rules and Administration, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 2960, a bill to authorize the Secretary of the Interior to memorialize the fifty-six signers of the Declaration of Independence in Constitution Gardens in the District of Columbia.

This bill would permit the use of approximately $350,000 in revenues generated by the American Revolution Bicentennial Administration for the establishment and maintenance of a memorial by the National Park Service. Because of the availability of these funds, no appropriation is required for the establishment of the memorial. Pursuant to Public Law 93-179, these funds are earmarked for such a purpose, and could not readily be used for other purposes. It is estimated that the available funds are sufficient for both the establishment and maintenance of the memorial for several years. No significant costs are expected to be incurred by the National Park Service for maintenance after that time.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(Mr. ALLEN assumed the chair.)

CRIMINAL CODE REFORM ACT OF 1977

Mr. ROBERT C. BYRD. Now, Mr. President, is the Senate resuming its consideration of the unfinished business at this time?

The PRESIDING OFFICER. The bill will be stated by title.

The second assistant legislative clerk read as follows:

A bill (S. 1437) to codify, revise, and reform title 18 of the United States Code, and for other purposes.

The Senate resumed the consideration of the bill.

UP AMENDMENT NO. 1148

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Delaware (Mr. BIDEN) proposes unprinted amendment numbered 1148.

Mr. BIDEN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 353, between lines 8 and 9, insert the following:

"(2) The Commission, in establishing categories of defendants for use in the guidelines governing imposition of a sentence of imprisonment, shall not consider subsections (d)(1)(B), (d)(1)(C), (d)(1)(F), (d)(1)(G), or (d)(1)(H).

On page 352—

(1) on line 29, insert "(1)" before "The";

(2) on line 34, strike "(1)" and insert "(A)";

(3) on line 35, strike "(2)" and insert "(B)";

(4) on line 36, strike "(3)" and insert "(C)"; and

(5) on line 37, strike "(4)" and substitute "(D)".

On page 353—

(1) on line 1, strike "(5)" and substitute "(E)";

(2) on line 2, strike "(6)" and substitute "(F)";

(3) on line 3, strike "(7)" and substitute "(G)";

(4) on line 4, strike "(8)" and substitute "(H)";

(5) on line 5, strike "(9)" and substitute "(I)";

(6) on line 6, strike "(10)" and substitute "(J)";

and

(7) on line 7, strike "(11)" and substitute "(K)".

Mr. BIDEN. Mr. President, further I ask unanimous consent that Senator

HART of Colorado be added as a cosponsor to this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I shall be brief. I will not take much of the Senate's time.

This amendment, I believe, would greatly enhance the fairness of the sentencing procedures set out in S. 1437, which I might note parenthetically greatly enhances already the fairness of the existing sentencing procedures.

It would preclude the sentencing commission from considering factors such as a defendant's education, vocational skills, employment record, and community ties for purposes of determining the question of incarceration; not probation, incarceration.

In other words, I wish to see to it that we do not continue what has been the practice in some instances of if you are poor, illegitimate, black, have no family ties, and have not had a job you are likely to go to jail; whereas, if you are educated, middle class, and fairly affluent, you are likely to get probation.

I should also note that this applies across the board, not just to poor black folks but poor white folks. It tends to be that from the studies that have been done with regard to sentencing that there is a correlation between the stiffness of the sentence and your economic background and family ties.

As has been pointed out to me and I suspect will be pointed out in discussion of this amendment, if anyone should be held accountable, it seems as though those who have more reason to know better should be held more accountable. This amendment is not dramatic, but I believe that it is important.

We have already gone far down the road under the leadership of Senator KENNEDY, and others, in curing the inequities of the sentencing system, and I think we should go a little farther in reforming the system. I believe adoption of this amendment would take us further along this important road of justice.

I yield the floor.

Mr. THURMOND. Mr. President, I can understand the goal the distinguished Senator has in mind which is to help the poor and underprivileged and those who have not had as good opportunities, but for that very reason I think that this amendment would do just the opposite.

I happen to have been a circuit judge at one time for a period of 8 years, but almost half of that was during World War II and I was in the war, but when persons came before me—and I am sure it was the case of other judges in my State—who were poor, had not had good opportunities and were underprivileged, good judges would show them special consideration. They would not hold them to as high a state of responsibility as they would a well-educated person, a person who had finished high school, or a person who had been to college.

And it seems to me that when a judge is ready to sentence a man he needs all the information he can get. He wants to find out how much education he has had, how he did in school. He would like to find out his skills and certainly his employment record: is he a fellow who has worked steadily, is he dependable, is he responsible, and just wavered from narrow path in this instance? Or is he a bum who never has worked, will not work, a parasite on the community, or a person of that kind?

As to family ties and responsibilities, I think it is well if a judge can know whether or not he has been a churchgoer maybe, whether he has been a good civic worker, whether he is a member of service clubs, whether he is interested in the promotion and the welfare of the whole community or whether he is practically an outcast in the community. I think all of these things are relevant and go into the pot, so to speak, that the judge can consider when he arrives at a sentence.

Now, Mr. President, I might say that the Justice Department is very bitterly opposed to these amendments, and I can certainly understand why. Again I say I think the able Senator from Delaware has very lofty motives here, but I think those motives would be defeated if we do here what he is asking to be done.

I think it is better to leave these elements in here, to let those who determine the sentence have the advantage of a defendant's education, his vocational skills, his employment record, and his community and family ties, and things of that kind.

I think it is helpful to anyone in sentencing another person to have the benefit of that knowledge.

Mr. BIDEN. Mr. President, I will be brief and I will then yield to my colleague from Colorado who would like to speak on this subject.

I think one of the primary objectives of the new sentencing provisions here was designed, is designed, to diminish, if not eliminate, the discretion of judges in sentencing people. Maybe it is a little too tough. But it seems to me if you commit a crime, two people commit the same crime, that regardless of what your background is you should be treated equally.

For purposes of probation I would acknowledge that there may be a difference. But the purpose of my amendment is to actually make justice blind, to get tougher and to see to it that whether or not you are rich and influential or poor and no influence, you serve the same time for the same offense.

That has not been the way it has worked. It has been applied inequitably.

Sentences have been applied inequitably; that was one of the reasons for my introducing so many amendments during the markup of this bill, and I am sure that is part of the reason for the introduction by the Senator from Colorado of amendments on the floor of the Senate of a similar nature.

But I will not belabor the point at this time. I yield to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, I want to join the Senator from Delaware in supporting this proposal. It was contained in a bill which the Senator from New York (Mr. JAVITS) and I introduced a year or so ago creating a sentencing commission, in trying to establish the principle of fairness and equity in sentencing and, of course, many of those provisions are not contained in the pending legislation, except for the one that the able Senator from Delaware has pointed out here, and that is the concept variously referred to as just deserts or commensurate deserts, proportionality of sentencing, and that is, as I understand, what he is attempting to accomplish, to further reduce this disparity that does exist in our present sentencing provisions.

On the surface it can be interpreted as harsh or draconian, but it certainly was not his purpose or mine in supporting this measure months ago. It is, in fact, to create a system of fairness and equity regardless of a person's economic background or level of education or whatever, and I certainly support this concept wholeheartedly.

I wish it could have been incorporated in this legislation. I think at some point down the road it will become the law because it is the right thing to do. So I certainly do support the proposal.

Mr. THURMOND. I would like to say this: If we follow the line of reasoning that all people who have committed the same crime should get the same sentence then you do not need but one sentence for robbery, only one for larceny, only one for any other crime.

The very idea of giving some flexibility to the judge, I think, is extremely important. Here we are limiting the judges so they will not go to the extreme either way. But we still leave flexibility in there, and I think you have got to do that because I am convinced that a man who has had good opportunities, a chance to get a good education, who is reared in a good home, if he goes out here and commits a crime he should be held to a higher responsibility than an underprivileged person who has not had those good opportunities, who has not had that good home environment and who, in my judgment, should not be held to as high a standard as another person who may have committed the same crime.

Mr. BIDEN. Mr. President, in the interests of comity, since it seems as though the Senator from South Carolina and I are not very far apart in what we are trying to accomplish, I would respectfully request that I be able to withdraw my amendment——

Mr. KENNEDY. Mr. President, will the Senator withhold that for just a moment?

Mr. BIDEN. I would be happy to.

Mr. KENNEDY. Mr. President, I understand the motion the Senator from Delaware is about to make. I just want to indicate that these factors should relate only to probation. The purpose of my statement is to inform the Commission to that effect.

I happen to believe, as I have stated before, that if this bill is to mean anything in terms of sentencing, it must reduce disparity in sentencing.

I would say, in my position as floor manager, that these factors should never

be taken into consideration in sentencing one to a term of imprisonment.

The argument can be made that the better the education the longer the sentence they ought to get; the poorer the education, the less they ought to get. Or vice versa. I know that is troublesome to the Senator from Delaware.

Mr. BIDEN. That is correct.

Mr. KENNEDY. So in that sense I would certainly hope these factors would not be used in considering prison time. But there may be other reasons for these factors that we cannot foresee, that judges and those who are experienced in the sentencing area can give some weight to.

But I just want the very clear understanding that the thrust in this area is to eliminate disparity and inequity.

Of course, the relevancy of these factors in the area of probation is obvious.

I would hope that it would be clear in the record what our intentions are—not to have these five factors be considered in setting guidelines for prisons. I want to underscore my own views on this important issue.

I thank the Senator from Delaware and the Senator from Colorado for making this case. We will leave it as it is with, hopefully, the understanding of their relevancy only to probation.

Mr. BIDEN. Mr. President, I thank the Senator from Massachusetts, the manager of the bill. He accurately described my intention in introducing this amendment.

But again in the interest of working out a long-term solution to this problem as we see it, and whether or not we can agree I do not know at this point, but I would respectfully ask unanimous consent that I be able to withdraw my amendment. I thank the Senate for its time and the Senator from South Carolina for his statements.

The PRESIDING OFFICER. No action has been taken on the amendment, the amendment may be withdrawn without unanimous consent. The Senator does withdraw his amendment, and the amendment is withdrawn.

(Mr. BIDEN assumed the chair as Presiding Officer.)

UP AMENDMENT NO. 1149

(Subsequently numbered amendment No. 1677)

(Purpose: To clarify intent of current law that political contributions between members of, members elected of, and candidates for Congress are not unlawful)

Mr. ALLEN. Mr. President, I send an amendment to the desk and ask unanimous consent that it may be in order at this time, and further, in accordance with the suggestion of the distinguished majority leader, I ask unanimous consent that the amendment be the pending question when the unfinished business is laid before the Senate on Monday.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN) proposes an unprinted amendment numbered 1149:

On page 78, line 12, strike the word "oral".

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HODGES. Mr. President, the Senate is nearing passage of S. 1437, codification of the Federal criminal laws. This is a work of codification unparalleled by any other in recent years. It brings together and clarifies confused and conflicting statutes which have been scattered throughout the United States Code by the legislative enactments of many Congresses. It is truly a monumental effort.

This bill primarily owes its existence to the efforts of two men. The first is my distinguished colleague, Senator KENNEDY, who has allocated much time and effort into producing the bill which we are about to pass. His guidance permeates its sections, and his desire to bring better justice to our citizens is reflected in its spirit. This legislation will stand as a tribute to his legislative skill.

Yet, there is another to whom this legislation is a culmination of years of legislative energy. That man is Senator John L. McClellan, my predecessor, and for many years the senior Senator from Arkansas.

Mr. President, I deeply regret the circumstances which bring me before you. The death of Senator McClellan was a great loss to the Senate and to the Nation. Even more unfortunate, however, is that he died before he could witness the achievement of his greatest legislative effort—Senate passage of a codification of the Federal criminal laws.

Throughout his long years of public service to the Nation, John McClellan labored to create conditions in this country that would engender respect for authority in society. This goal is reflected throughout this legislation. And, although some quarrel with the means chosen to effectuate that end, none may quarrel with the end itself. For it approaches the heart of our ability to function as a society.

John McClellan spent years working on this bill. It is some of the most complex legislation the Senate has encountered, and, more importantly, will affect the lives of Americans as much as any legislation this session will enact. The bill is not perfect, having areas which must receive future attention. Yet it is a masterpiece, a basic framework of criminal laws which later Congresses may polish with the knowledge that what must be worked with has been gathered in one place.

Mr. President, this bill is symbolic of what the democratic legislative process is about. The great works of Congress are not those which receive maximum publicity nor those addressing problems momentarily in the Nation's eye. They are legislative efforts pursued for years, resulting from out-of-the-way hearings and tedious research never seen by the public. We are grateful for men who have the patience and courage to initiate such measures, and the perseverance to see them through.

John L. McClellan was such a man, and this bill is evidence of what one Senator's determination can produce. Accommodating the diverse views of many Senators, responding to his critics, John McClellan created legislation acceptable to this Senate out of a complex legislative situation which would have discouraged many others. His force was always the thrust behind this codification, and his unflagging devotion to this goal should be remembered.

Yet, Mr. President, this was the method by which Senator McClellan approached all of life, not just this bill. My colleagues know of the accumulated ordeals which he faced and mastered in his personal life. His strength of will, expressed in his determination and hard work, are reflected in the various proposals he initiated and shepherded through the Senate. From the creation of the McClellan-Kerr Arkansas River navigation system to the regulation of labor racketeering, Senator McClellan authored legislation which has touched the life of almost every American. And all are the result of his hard work and attention to detail that guided his life. Although he came from earlier, and perhaps simpler times, Mr. President, Senator McClellan demonstrated the flexibility of views and judgment essential to an informed and balanced outlook on life. His tenure in office spanned wars, recessions, depressions, and the technological explosion. Through it all, John McClellan held true to those values in which he believed and which are in great part reflected in this legislation.

Although I never enjoyed the privilege of serving with him in the Senate I have but to consider this bill to realize the dedication and skill with which he approached his work here. We approach the end of a course which Senator McClellan started over 10 years ago, and my thoughts turn to him. I trust that my colleagues will remember that one of the Senate's truly great legislators is no longer with us, and that this bill, when enacted, will serve as a monument to his memory.

Mr. NELSON. Mr. President, S. 1437 represents a benchmark in the effort to codify the Federal criminal law which has spanned more than a quarter century. I support it because it is a significant advance. The effort began in 1952 with the planning and drafting of the Model Penal Code by the American Law Institute. A second major step was taken with the creation of the Brown Commission by Congress in 1966, and the Commission's thorough and enlightened work over the next 4 years. Subsequently, however, from 1972 to 1975, the reform effort suffered almost irreparable harm as a Justice Department task force took the lead in transforming the codification effort into the now notorious S. 1, a vehicle for many provisions posing a serious threat to first amendment rights of speech, press and assembly. Fortunately, widespread public and congressional opposition killed S. 1 in early 1976 and sent congressional and administra-

tion draftsmen back to the drawing board, in the hope that they could recapture some of the progressive spirit which originally provided the impetus for the codification movement. S. 1437, reported by the Judiciary Committee by a vote of 14 to 2, is the result of these efforts.

S. 1437 is not my idea of what the perfect criminal code should be, but it is a major improvement over current law. There are sections of the code I would prefer to see amended or deleted. Moreover, in an attempt to avoid the controversy surrounding S. 1, the drafters of the code have agreed to carry forward current law in many controversial areas. As a result, as law professor Carole Goldberg has written:

> In some instances, S. 1437 retains existing law even when that has meant perpetuating ambiguities, uncertainties, overbreadth and abusive applications.

While I understand the political realities which dictated the committee's course, I am particularly dismayed at our inability to clarify the existing espionage statute, which remains a proven and continuing threat to constitutional rights.

But in writing legislation, the quest is for progress, not perfection. This important goal is particularly appropriate with respect to the herculean task of criminal code reform. As Louis Schwartz,[1] director of the Brown Commission has written:

> Reform of the federal criminal law is a project of awesome scope and complexity entailing not merely legal considerations but also sensitivity to history, politics, social psychology, penology, and the religious, ethnic, and economic tensions within this nation. The reform project must conform with that remarkable structure for resolving tensions, the Constitution of the United States. It is difficult enough to coordinate the wills of 200 million Americans in regard to even one of the many emotion-stirring issues of penal law . . . To bring Congress to agreement simultaneously on a myriad of changes, each of which will be regarded by some as progress and by others as catastrophe, would appear to require a political miracle. L. Schwartz, "Reform of the Federal Criminal Laws: Issues, Tactics, and Prospects," 1977 Duke L.J. 171.

In evaluating S. 1437, the basic question should be: As best we can determine, will the enactment of this legislation improve the administration and the public's perception of our criminal justice system?

And given the controversial history of this measure and the concerns which its earlier versions justifiably aroused, we must ask specifically: Does it improve on the current situation while carefully respecting constitutional rights which would have been seriously threatened by the enactment of S. 1? A modern, neat, and efficient criminal code is not a goal in itself; orderliness is rarely a hallmark of democracy; we have learned from some totalitarian countries what a great virtue disorderliness can be.

On balance, S. 1437 represents substantial reform of the Federal criminal code. I agree with Professor Schwartz's view that—

> It would be ironic and tragic if a major reform bill should be defeated by continued opposition of those who should rejoice if S. 1437 is enacted.
>
> A balanced appraisal of the bill requires recognition of three propositions: The bill makes literally hundreds of improvements over existing law; the bill has short-comings, as where it bypasses thorny issues like capital punishment, gun contrtol, and wiretapping, leaving existing law unchanged; the bill would in no significant respect change the law for the worse.
>
> Defeat of S. 1437 would leave us with the chaos and injustice of existing federal criminal law, while missing a rare political opportunity to make important gains. The tactics of some civil liberties groups, opposing any bill which does not incorporate all the advances they desire, would effectively veto all progress.

Moreover, Professor Dershowitz of Harvard, this Nation's leading civil liberties scholar, has reviewed S. 1437 as reported from the Judiciary Committee and in a November 17, 1977, letter to the editor of the Los Angeles Times said:

> As a civil libertarian who was strongly opposed to the original S. 1, I approached the provisions of S. 1437 with some skepticism. A careful comparison of these provisions with existing law has convinced me that passage of the new bill would strengthen our democratic institutions and reinforce our liberty. To be sure, the bill fails to make some changes, which I and other civil libertarians have long advocated. I continue to hope, and will continue to work for, such changes. But the net effect of S. 1437 is a substantial improvement over existing law.
>
> While I am not satisfied with all the provisions of the code, and while I still hope there will be some improvements, I am convinced that the proposed code contains several important improvements over existing law, that it reflects a net gain for civil liberties, and that it does not contain any new provisions that can truly be called repressive.
>
> Moreover, its sentencing provisions with their substantial reduction of discretion and disparity may constitute the single most important criminal law reform in recent decades. Considering the realities of our political institutions and of current public opinion about crime and justice, I believe that failure to enact these improvements would disserve the interest of civil liberties in the United States.

That this legislation has reached the full Senate for consideration is nothing short of the "political miracle" to which Professor Schwartz referred. But more importantly, despite some provisions with which I disagree, I think the enactment of S. 1437 would improve the quality of justice in this country without posing a threat to the exercise of constitutionally protected rights.

At present, our criminal law is a hopeless hodgepodge of legislative enactments, interpreted by judicial decisions, replete with inconsistent, repetitious, and obsolete provisions. There is almost universal agreement that codification of the laws is sorely needed. Critics of S. 1437 concede that codification of the Federal criminal code is a useful goal; however, these very same groups then gloss over its effects in order to focus attention on specific provisions of the bill that cause them concern.

The benefits of codification may be more difficult to assess than the likely impact of any single provision of the code, but the benefits are, nonetheless, very real. For example, current law presents a patchwork of sections dealing with larceny, embezzlement, fraudulent conversion, and obtaining by false pretenses; these sections differ from one another in terms of the state of mind required to commit the crime and the penalties to be imposed. What results is that criminals can slip through technicalities in the law. Prosecutors can select from among the often overlapping statutes, depending on their reaction to the crime and the prospective defendant. People committing very similar criminal acts go to widely disparate fates. S. 1437 would alleviate these problems—and any like them by substituting one comprehensive theft section for the current statutory disarray.

Similarly, obsolete statutes are not just interesting curiosities; they can be dangerous tools in the hands of unprincipled prosecutors. Under the Logan Act, for instance, since 1799, it has been a criminal act for private citizens to communicate with a foreign government. The statute lay around for years until the Vietnam war, when it was dusted off and employed as an instrument with which to threaten opponents of the war who had visited North Vietnam as part of their efforts to bring about peace. In addition, S. 1437 repeals or reforms numerous other offenses which no longer conform to our idea of conduct that should be punished as criminal, including:

> Repeal of the Smith Act (teaching or advocating subversive doctrines).
>
> Repeal of the World War I section penalizing "false rumors" impairing military effectiveness.
>
> Revolutionary curtailment of sex offenses.
>
> Expanding the antidiscrimination laws to protect women and aliens.
>
> Articulating a defense to prosecution for disobeying a court order, where the order can be proved invalid.
>
> Providing legislative and administrative criteria for sentencing and parole so as to promote equal justice.
>
> Inaugurating a system of appeal from sentences; heretofore there has been no remedy against the arbitrariness of individual district judges.
>
> Ameliorating the penalties for petty marijuana transactions.
>
> Broadening the responsibility of corporate officers, whose reckless mismanagement facilitates the commission of corporate crime in fields such as consumer protection, civil rights and environment.
>
> Adding to the sanctions against corporate crime the possibility of an order requiring that conviction be publicized to other potential victims.

Perhaps the most crucial sections of S. 1437—and the boldest innovations—are the sentencing reforms. At present, the Federal courts utilize a system of "indeterminate" sentencing: the judge has a great deal of discretion in setting the sentence, and the parole board has tremendous discretion in deciding at what point the prisoner should be released. In theory, the indeterminate sentencing is designed to allow the judges the flexibility to fashion punishment suited to the circumstances of an individ-

[1] Director of the Brown Commission, Law Professor at the University of Pennsylvania and one of the nation's long time spokesman for criminal code reform.

ual's case and the parole board the flexibility to determine when a prisoner is properly rehabilitated.

In practice, however, many liberal commentators agree that the system has not worked. It has produced vast inequities in punishment between people convicted of the same crimes, under similar circumstances, and evidence suggests that the parole board has wielded its discretion in an arbitrary and capricious manner. In the words of two of the country's leading experts, Federal Judge Marvin Frankel and Harvard law professor Alan Dershowitz, our current sentencing system is not flexible, but "lawless."

S. 1437 responds to the evidence of systematic failure with a major systemic reform, designed to make sentencing more consistent and predictable. In essence, the bill sets forth a procedure for presumptive sentencing. A sentencing commission is established to review the offenses and current sentencing practice and set forth guidelines suggesting the proper range of punishment for each offense. The judge would ordinarily be expected to sentence within the guidelines; if the judge decided to impose a sentence which was more lenient or stringent, the judge would have to explain the sentence, and the defendant or the Government could for the first time seek appellate review of the sentence. Taken together, the establishment of a sentencing commission; the requirement of guidelines spelling out the recommended range of punishment, and the innovation of appellate review in sentencing could do much to cure the dangerously whimsical nature of our current sentencing practices.

These sentencing reforms have provoked substantial concern. Although many critics support the general thrust of the proposals, they have argued that the reforms still leave too much discretion for the judge, and that the standard of appellate review is not stringent enough to furnish a meaningful check on judicial discretion. Moreover, the maximum term of imprisonment for each grade of offense is set high in S. 1437; focusing on these maxima the critics have expressed the concern that inmates may actually end up serving more time in jail under the new system, because the proposed scheme greatly reduces the number of cases in which parole will be granted.

I do share the concern that the success of the sentencing reform depends largely on the willingness of the commission to suggest levels of punishment which are reasonable, reflecting the periods of time currently served in the average case, rather than the maxima punishment available under the statute. Professor Dershowitz stressed this issue in testimony to the Judiciary Committee:

> The value of the presumptive sentencing procedure lies in its ability both to provide certainty and fairness by placing the vast majority of similar crimes within a narrow range of sentences, and to provide the flexibility necessary to deal with extra-ordinary different crimes of the same genre by reaching either above or below this range.
>
> But once having established a range, the tendency of judges—and properly so—will be to place nearly all defendants convicted of that particular crime within that range. Thus it is imperative that the fear of "letting him off easy" not be allowed to drive up the range to unnecessary heights, thereby inordinately penalizing the average defendant. Therefore, the range must be kept narrow and low, and reliance placed on judicial discretion to go beyond it when circumstances so dictate. Moreover, I must emphasize that if the range is set too high, it simply will not work. History has taught us that we pay for every increase in severity by a decrease in certainty, and that certainty is far more important than severity in reducing crime.

These concerns have led to important amendments in committee by Senator ABOUREZK to strengthen the message to the Sentencing Commission that for offenses where incarceration is recommended, the suggested terms should reflect the average time actually served, rather than the statutory maxima.

No innovation comes without risk. But I am satisfied that the sentencing proposals reflect the best wisdom currently available in the area and that no other feasible reform carries with it any stronger guarantee of success. In this pivotal and troubled area of the criminal justice system, it is time for a major change. The words of Judge Frankel, expressing the thoughts of a leading Federal judge about sentencing, cannot be disregarded:

> Always there has been a disquieting awareness of having too much power, too little knowledge, and next to nothing in the way of guidance from the Congress, the higher courts, or from any other quarter. I have known vividly that I am responsible, with all of my colleagues, for creating the crazy-quilt of sentencing disparities that is probably the most awful aspect of the subject.
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> * * * * *
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> What we have realized in the last decade or so is that the field of sentencing is a vast wasteland of ignorance, curbstone hunches, mythology, and general guesswork.

Weighing against the advances incorporated in S. 1437 are two general areas of concern. First, there are a handful of provisions in this code which represent new offenses with some potential impact in the area of the first amendment rights. These include: section 1003 (Solicitation); section 1302 (Obstructing a Government Function by Physical Interference); section 1328 (Demonstrating to Influence a Judicial Proceeding); section 1861 (Failure to Obey a Public Safety Order).

As a matter of principle, I am uncomfortable with the idea of expanding Federal jurisdiction in areas which may touch on first amendment rights of speech and assembly. Generally, I would prefer to see these provisions deleted from the code. However, several of the new sections represent considered recommendations dating back to the work of the Model Penal Code and the Brown Commission. The sections are carefully drafted, and the report spells out their justification and scope in some detail. The possibility that these sections will be applied in an abusive fashion can never be discounted, but the sections as written are not hunting licenses for unprincipled police or prosecutors.

With respect to these sections, I generally share the views of Prof. Louis Schwartz; who has written:

> It is hard to take seriously the notion that because prosecutors might abuse laws against obstruction of government (for example) we should have no such laws; that we should, for example, repeal traffic laws or the trespass laws, which also can be and have been abusively employed against peaceful demonstrators. Unfortunately, the unabusable law has not yet been invented, and we must still rely on the first and fourteenth amendments to guard against perverted applications of otherwise useful legislation.

Wiretapping in criminal cases was one of the controversial areas in which the committee opted basically to leave current law intact, with some minor improvements. However, S. 1437 wisely eliminates 18 United States Code section 2511(3), the so-called national security disclaimer, from the law. That section provides that nothing in title III or other specified statutes limited whatever power the President might have to protect the Nation by conducting electronic surveillance. As the committee report notes:

> It is clear from legislative history of the disclaimer that it was not and never purported to be a recognition of inherent power, or a grant of statutory power to the President to conduct national security electronic surveillance, but was merely a legislative statement that Title III . . . was not intended to deal with the subject. The Supreme Court has so held. *United States* v. *United States District Court*, (the *Keith* case) 407 U.S. 297 (1972). Since the provision has caused confusion in the past, the Committee decided to delete the national security disclaimer language as clearly unnecessary. (Report p. 967 m. 38).

Because section 2511(3) generated considerable confusion, the committee was entirely correct to eliminate it from the law. However, because the Supreme Court had construed it as essentially a statement of neutrality, its deletion carries no substantive weight. The fundamental issue remains. Since 1973, I have been offering legislation to curb the use of warrantless "national security" electronic surveillance. The Church committee report noted that Presidents since Franklin Roosevelt have claimed the "inherent" power to authorize warrantless electronic surveillance when they judge it necessary for the protection of "national security"; the Church committee also made it clear that this "power" had been repeatedly abused.

In recent years, court decisions have undermined much of the basis for presidentially authorized warrantless electronic surveillance. Decisions in *Keith* and *Zweibon* v. *Mitchell*, 516 F. 2d 594 (D.C. Cir. 1975) have established that a warrant is always required before electronic surveillance is conducted against an American citizen unless that person is collaborating with a foreign power. The possibility for abuse remains, however, if the executive branch retains the right to determine unilaterally when an American is collaborating with a foreign power. For this reason, the requirement

of a judicial warrant, based upon probable cause, consistent with the unusual dictates of the fourth amendment, should be extended in this area of foreign intelligence.

Because legislation to establish a warrant procedure in the foreign intelligence area does not properly come within the ambit of S. 1437, an amendment on the issue would not have been appropriate. Moreover, S. 1566, legislation dealing with this vital issue has been reported by the Judiciary Committee, is presently before the Intelligence Committee, and should come before the Senate in the next few months. No legislation this year will entail a more sensitive balancing of national security and constitutional rights than S. 1566. It also represents the first direct legislative response to the revelations of the Church committee's study of the intelligence community. I am hopeful that the Senate will commit itself to full and careful consideration of this important legislation in the near future.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, on Monday, the Senate will convene at 1 o'clock p.m. following the recess.

After the two leaders or their designees have been recognized under the standing order, the Senate will resume its consideration of the unfinished business. I believe I am correct in stating that no order has previously been entered for the recognition of any Senator on Monday; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. I thank the Chair. Convening at 1 o'clock p.m. on Monday will accommodate Senators who are members of the Judiciary Committee and will want to be present for the confirmation hearings on Mr. Webster, the President's nominee for FBI Director, and who also want to be on the floor as the Senate continues to consider the criminal code revision measure, the matter now pending.

I would anticipate several rollcall votes on Monday afternoon. The Senator from Alabama (Mr. ALLEN) has indicated that he will be ready to press forward with his amendment. May I ask the distinguished Senator, has he laid down his amendment?

Mr. ALLEN. Yes, I have, in accordance with the majority leader's suggestion.

Mr. ROBERT C. BYRD. Mr. President, I would suggest that Senators be prepared for rollcall votes on Monday. The pending amendment by Mr. ALLEN is unprinted amendment No. 1149.

RECESS UNTIL 1 P.M. ON MONDAY

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 1 o'clock p.m. on Monday next.

The motion was agreed to, and at 4:44 p.m. the Senate recessed until Monday, January 30, 1978, at 1 p.m.

EXTENSIONS OF REMARKS

A STATEMENT ON UNITED STATES-SOVIET RELATIONS BY THE HONORABLE LEE H. HAMILTON

HON. JOHN BRADEMAS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, January 26, 1978

Mr. BRADEMAS. Mr. Speaker, this last week several members of the Supreme Soviet of the Soviet Union were in Washington, D.C., to take part in exchanges of talks with Members of our House of Representatives and Senate.

This meeting was another in a series of exchanges between Members of our own Congress and of the Supreme Soviet which began with a visit from them here in 1974 and was followed by a visit to the Soviet Union by a congressional delegation in 1975.

Our distinguished colleague, the senior Senator from California and Senate Majority Whip, the Honorable ALAN CRANSTON, and the distinguished senior Senator from New York, the Honorable JACOB K. JAVITS, were the cochairmen of the Senate Delegation to receive members of the Supreme Soviet while I had the privilege of serving as chairman of the House Delegation.

Mr. Speaker, a number of Members of the House of Representatives, both Democrats and Republicans, took part in conversations on a wide variety of topics with our visitors from the Soviet Union. In this connection, I was particularly impressed by the statement made at the opening of one of our sessions by our distinguished colleague from Indiana, the Honorable LEE HAMILTON, an outstanding member of the Committee on International Relations and chairman of its Subcommittee on Europe and the Middle East.

Congressman HAMILTON set forth, in my view, in a most lucid and effective way the major dimensions of Soviet-United States relations and I insert at this point in the RECORD the text of his excellent statement, which I commend to the attention of my colleagues:

REMARKS OF THE HONORABLE LEE H. HAMILTON, CHAIRMAN, SUBCOMMITTEE ON EUROPE AND THE MIDDLE EAST, TO THE SOVIET PARLIAMENTARY DELEGATION

I wish to join in welcoming our Soviet colleagues. We look forward to many frank and productive exchanges during our sessions. At this time I would like to make some general observations about relations between our two countries. I wish to emphasize five principal themes.

First, how the United States deals with the Soviet Union is the central feature of American foreign policy today. Our relationship is of fundamental importance.

It simply is not possible to have a peaceful international order without a constructive relationship between the United States and the Soviet Union. There can be little international stability unless the United States and the Soviet Union conduct themselves with moderation and restraint.

Across the world people seek peace but too often suffer war. They seek tranquillity but too often suffer violence and bloodshed. Global fears of nuclear holocaust and world hopes for peace turn on the attitude that the United States and the Soviet Union have toward one another.

In a very real sense, every eye in every land is trained on the American-Soviet relationship.

Second, we must make every effort to be realistic and consistent in our assessment of the relationship between our two nations.

We need to prepare ourselves for a long, evolutionary process of change in our relations. The process will involve many stops, starts, detours, setbacks and gains. It will require constant attention and there will be many instances of ambiguity and uncertainty when we will not know whether particular events or policies will produce progress or retrogression. Nonetheless, we should accept the process with all its imperfections and we should not be dissuaded or diverted from our efforts by what will inevitably be mixed results.

Detente is an on-going process. The agenda of detente is, and will continue to be, full. Our major concerns must be to diminish conflict and to strive for accord. Attitudes may continue to swing between the poles of suspicion and euphoria. Neither extreme is realistic. Both of them can be dangerous.

Coping with the implications of the American-Soviet relationship will be the main security problem for both our countries for a good many years to come. The predicament in which we have been placed will not disappear and it may never be fully resolved, but it will have to be faced by each of our nations in the foreseeable future.

A realistic view of the relationship acknowledges that we are bound to compete with one another. It acknowledges that we have parallel interests and that we must co-exist. It acknowledges that the contentious issues between us are many and complex.

We must not expect too much. We must know what can, and what cannot, be achieved between our two nations. We cannot reasonably believe that the path of detente will be smooth and even. The differences between us in philosophy, interests, national aims and ideology are simply too great. The differences do not necessarily arise from misunderstanding or conflicting personality. Rather, they are deeply rooted in the histories of our two nations and in the ways that we have developed. They are expressed in political, military and economic competition.

To sum up, a realistic and consistent assessment of the relationship between our two countries accepts differences and division while it underscores the grave risks of failure to co-operate.

Third, our purpose must be to search for a more constructive relationship between our two nations.

We expect this search to be a continuing one and we will not be able to say that the final goal has been realized or reached at any one point in time. However, the American effort to find a more constructive relationship will continue under any President or any party because the effort aims at what the vast majority of the American people want: an easing of international tensions.

We need to continue to try to engage one another in wider and wider areas of cooperation. Most Americans and, I suspect, most citizens of the Soviet Union do not want the opposite of detente: strained relations.